



THE DOCKET

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What Move Over Means in Michigan

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The third Saturday in October is National Move Over Day. The purpose behind the day is to raise awareness for the law that requires drivers to move over a lane when passing certain vehicles on the side of the road. Michigan has had a Move Over Law for many years now, but it was expanded in February 2019.

The expansion of the law is the result of a growing concern for the safety of road workers. Every year, dozens of Michigan road construction workers are injured or killed on the job. In 2016, there were almost 5,000 work-zone crashes in Michigan, resulting in 17 fatalities and 75 serious injuries. First responders also continue to face some of the greatest hazards from speeding motorists. In one week alone back in February, three separate incidents involving the move over law occurred in the metro Detroit area. In one incident, a state trooper was taken to the hospital after his patrol car was struck while parked in the center median of I-696 in Novi. In two other separate incidents that occurred on the same day, a law enforcement officer was struck twice and a state trooper's vehicle was hit while parked on the Lodge (M-10) Freeway.

Michigan's Move Over Law is contained in MCL 257.653. The original section of the law is in section a. It deals with emergency vehicles such as police, fire, and EMS, and states as follows:

(1) Upon approaching and passing a stationary authorized emergency vehicle that is giving a visual signal by means of flashing, rotating, or oscillating red, blue, white, or amber lights as permitted by section 698, the driver of an approaching vehicle shall exhibit due care and caution, as required under the following: a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle shall proceed with caution, reduce his or her speed by at least 10 miles per hour below the posted speed limit, and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary authorized emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b). b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if movement by the driver of the vehicle into an adjacent lane or 2 vehicle widths apart is not possible as described in subdivision (a), the approaching vehicle shall proceed with due care and caution and reduce his or her speed by at least 10 miles per hour below

the posted speed limit, or as directed by a police officer.

The expanded version is contained in section b of MCL 257.653. It states as follows:

(1) Upon approaching and passing a stationary solid waste collection vehicle, a utility service vehicle, or a road maintenance vehicle that is giving a visual signal by means of flashing, rotating, or oscillating amber lights as permitted by section 698, the driver of an approaching vehicle shall exhibit due care and caution, as required under the following: a) On any public roadway with at least 2 adjacent lanes proceeding in the same direction of the stationary solid waste collection vehicle, utility service vehicle, or road maintenance vehicle, the driver of the approaching vehicle shall proceed with caution, reduce his or her speed by at least 10 miles per hour below the posted speed limit, and yield the right-of-way by moving into a lane at least 1 moving lane or 2 vehicle widths apart from the stationary solid waste collection vehicle, utility service vehicle, or road maintenance vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or 2 vehicle widths apart is not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver of the approaching vehicle shall proceed as required in subdivision (b). b) On any public roadway that does not have at least 2 adjacent lanes proceeding in the same direction as the stationary solid waste collection vehicle, utility service vehicle, or road maintenance vehicle, or if the movement by the driver of the vehicle into an adjacent lane or 2 vehicle widths apart is not possible as described in subdivision (a), the approaching vehicle shall proceed with due care and caution and reduce his or her speed by 10 miles per hour.

The law expanded this year to cover more stationary vehicles on the side of the road. In addition to emergency vehicles, it now also applies to the following:

- Road service vehicles such as tow trucks
- Road maintenance vehicles
- Utility service vehicles

Garbage trucks

Under the law, when approaching any of these stationary vehicles on the side of the road, a driver is required to slow down to at least 10 miles below the posted speed limit and move over a lane. If moving over into a lane is not possible due to traffic, weather, or road conditions, the driver must slow down to least 10 miles below the posted speed limit, pass with caution, and give the stationary vehicle as much space as possible.

The law does not require a driver to move over for a stationary vehicle without its lights on, but it is recommended that drivers always pass stationary vehicles on the side of the road with caution and leave as much room as possible. The penalty for violating this law is a civil infraction that carries a \$400 fine and two points on one's driver's license.

It is incumbent that law enforcement officers and prosecutors enforce this law to save the lives of first responders and other individuals working on the side of the road. The Traffic Safety Training Program (TSTP) offers trainings on this law and other violations of the Motor Vehicle Code that have been put in place to make Michigan roads safer for everyone.



SAVE THE DATE

The 2020 Annual Conference will be September 23-25, 2020 at **Park Place Hotel**, Traverse City, MI.



JUDICIAL CONDUCT REPORTER - SPRING 2019

A PUBLICATION OF THE NATIONAL CENTER FOR
STATE COURTS CENTER FOR JUDICIAL ETHICS

Sleep deprivation

The Nevada Commission on Judicial Discipline publicly censured a judge for using an alternate judge whenever it was his turn to be the on-call search warrant judge and failing to comply with the chief judges' directives about his duties. In the Matter of Hastings, Findings of fact, conclusions of law, and imposition of discipline (Nevada Commission on Judicial Discipline March 6, 2019). Following a U.S. Supreme Court decision that police officers had to obtain a warrant for blood tests during drunk-driving stops, all of the judges on the Las Vegas Municipal Court agreed that each judge would be on-call to review telephonic search warrant requests for 24-hours, for one week, once every six weeks. Despite agreeing to that procedure, Judge Hastings used an alternate to perform on-call duties every time it

was his turn in the rotation so that he did not perform those duties "even one time" in approximately four years. Three chief judges repeatedly corresponded and met with Judge Hastings about his failure to perform his duties as on-call search warrant judge; one chief judge even pleaded with him to, "please, just do it once." The judge ignored them.

The Commission emphasized the testimony of four other judges on the court that they were all "significantly affected" by sleep deprivation when performing on-call duties but that Judge Hastings was the only judge who used alternates. The Commission found that the judge's excuse that he wakes up "cranky" and cannot get back to sleep after receiving a call about a warrant was shared by all of the judges but concluded that "a judge cannot shirk his or her assigned duties based simply upon a dislike for such duties." Although the judge was willing to pay the costs of an alternate himself, the Commission found that a judge "cannot simply pay someone else to consistently perform assigned" but undesirable judicial duties, stating that the judge had been elected to perform all the duties of a judge on the municipal court.

From SCAO

Court Rules & Administrative Orders

MCR Cite: 6.610

ADM File No: 2018-23

Comment Expires: October 1, 2019

Staff Comment: The proposed alternative amendments of MCR 6.610 would allow discovery in misdemeanor proceedings in the district court. Alternative A would create a structure similar to the federal rules (FR Crim P 16[b]) in which a defendant's duty to provide certain discovery would be triggered only if defense counsel first requested discovery from the

prosecution, and the prosecution complied. Alternative B is a proposal recommended by the Prosecuting Attorneys Association of Michigan in its comment on the original proposal published for comment in this file. ***Pending results of public hearing held on 11-20-19.**

MCR Cite: 6.302 and 6.610
ADM File No: 2018-29
Comment Expires: January 1, 2020
Staff Comment: The proposed amendments of MCR 6.302 and MCR 6.610 would eliminate the requirement for a court to establish support for a finding that defendant is guilty of the offense charged as opposed to an offense to which defendant is pleading guilty or nolo contendere. The sentencing guidelines make clear that offense variables are to be scored on the basis of the “sentencing offense alone,” not the charged offense. Further, an “offense to which defendant is pleading” would include the charged offense (if defendant is pleading to the charged offense) as well as any other offense that may have been offered by the prosecutor, so the “charged offense” clause may well be unnecessary.

Adopted:

MCR Cite: 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119, and Rescission of Rules 2.226 and 8.125
ADM File No: 2002-37
Effective Date: January 1, 2020
Staff Comment: The amendments of MCR 1.109, 2.107, 2.113, 2.116, 2.119, 2.222, 2.223, 2.225, 2.227, 3.206, 3.211, 3.212, 3.214, 3.303, 3.903, 3.921, 3.925, 3.926, 3.931, 3.933, 3.942, 3.950, 3.961, 3.971, 3.972, 4.002, 4.101, 4.201, 4.202, 4.302, 5.128, 5.302, 5.731, 6.101, 6.615, 8.105, and 8.119 and rescission of MCR 2.226 and 8.125 continue the process for design and implementation of the statewide electronic-filing system.

MCR Cite: 1.109, 8.119, Rescission of AO 2006-2, and Amendment to AO 1999-4
ADM File No: 2017-28
Effective Date: January 1, 2021
Staff Comment: The amendments make certain personal identifying information nonpublic and clarify the process regarding redaction.

MCR Cite: 3.106
ADM File No: 2018-18
Effective Date: January 1, 2020
Staff Comment: The amendment of MCR 3.106 requires trial courts to provide a copy of each court officer’s bond to SCAO along with the list of court officers.

Adopted AO: Adoption of Chief Judges in Michigan Courts
ADM File No: 2019-24
Effective Date: January 1, 2020
Staff Comment: Lists the judges appointed as chief judges of the courts for a two-year period.

Amended AO: Mandatory e-Filing for attorneys
ADM File No: 2014-23
Effective Date: February 1, 2020
Staff Comment: Updates the language and requires all attorneys to e-File in the Michigan Supreme Court and Court of Appeals.

MCR Cite: 8.110
ADM File No: 2019-03
Effective Date: January 1, 2020
Staff Comment: The amendments of this rule expand and clarify the chief judge selection process, modify the judicial vacation standard as it relates to the number of carryover days and when they may be used, and allow the State Court Administrator to require a chief judge to attend training.

MCR Cite: 8.115
ADM File No: 2018-30
Comment Expires: May 1, 2020
Staff Comment: The amendment of MCR 8.115, submitted by the Michigan State Planning Body,

explicitly allows the use of cellular phones (as well as prohibits certain uses) in a courthouse. The rule makes cell phone and electronic device use policies consistent from one court to another, and broadens the ability of litigants to use their devices in support of their court cases when possible.

Legislation

Statute Cite: MCL 28.273

P.A. Number: 2019 PA 78

Effective Date: September 30, 2019

What it Does: Amends the sunset on fees collected by the Department of State Police (MSP) for collecting fingerprints and processing fingerprint – and name-based criminal record checks from October 1, 2019 to October 1, 2023. The fees would remain the same. [\$30 for fingerprint and \$10 for name-based criminal record checks.]

Statute Cite: MCL 28.725

P.A. Number: 2019 PA 82

Effective Date: September 30, 2019

What it Does: Amends the Sex Offenders Registration Act (Public Act 295 of 1994) to extend from January 1, 2019, to January 1, 2023, the applicability of the \$50

Case Law

RPF Oil Co v Genesee Co, ___ Mich App ___ (2019). Genesee County passed an ordinance that prohibited the sale of any tobacco product or paraphernalia to persons under 21 years of age. Plaintiff owned and operated convenience stores in Genesee County. On May 12, 2017, plaintiff filed a declaratory-judgment action seeking the trial court’s determination that the Age of Majority Act MCL 722.51 et seq. and the Youth Tobacco Act, MCL 722.641 et seq. preempted the county’s Tobacco 21 Regulation because it conflicted with the state statutes. The trial court entered a final stipulated order under which the County agreed not to enforce the Tobacco 21 Regulation unless the trial court’s summary-disposition order was overturned on appeal. The Court of Appeals affirmed the trial court’s ruling. It reasoned that local governments may regulate

matters of local concern only in a manner and to the degree that their regulations do not conflict with state law. *City of Taylor v Detroit Edison Co*, 475 Mich 109; 117-118 (2006). Our Supreme Court has explained that an ordinance may add additional prohibitions to the prohibitions set forth in a statute. *Miller v Fabius Twp Bd*, 366 Mich 250, 256; 114 NW2d 205 (1962). However, a local government may “not attempt to authorize by the ordinance what the legislature has forbidden or forbid what the legislature has expressly licensed, authorized, or required” *Id.* at 256. In MCL 722.53, the Legislature clarified further that the Age of Majority Act “supersedes all provisions of law prescribing duties, liabilities, responsibilities, rights and legal capacity of persons 18 years of age through 20 years of age different from persons 21 years of age[.]” The county’s Tobacco 21 Regulation prohibits the sale of tobacco to all persons under the age of 21. In doing so, the Tobacco 21 Regulation plainly prohibits what Michigan law permits by diminishing the rights and privileges granted by state law to persons who have reached the age of majority.

From OHSP

The 24th Annual Traffic Safety Summit will be held March 10 & 11, 2020 at the Kellogg Hotel and Conference Center, East Lansing, Michigan.

