

PROCEDURE MANUAL

07-01



POLICE MICHIGAN STATE

Enforcement of Laws Regarding Public Spaces, Polling Places and Firearms

Purpose: This manual includes excerpts from case law, court opinion and department directive applicable to public spaces, including political polling places. While not comprehensive, the content within provides guidance to enforcement members on action to be taken in these settings.

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Section 1: Michigan Penal Code (MPC) - Select Violations

1.1 Disturbing The Peace (90-Day Misdemeanor) [MCL 750.170](#)

Elements of Disturbing the Peace:

- a. Did make or excite a disturbance.
- b. In a business place, at an election place, in a street, lane, alley, highway, public grounds or park, in a public building, at a public meeting where citizens were peaceably and lawfully assembled.

Note: Although the phrase “exciting a contention” as used in MCL 750.170 is unconstitutional ([People v Vandenberg, 307 Mich App 57 \(2014\)](#)), the violation still applies to a “disturbance.” A “disturbance” is an interruption of peace and quiet, a violation of public order and decorum, or an interference with or hindrance of one in pursuit of his lawful right or occupation ([People v Weinberg, 6 Mich App 345 \(1967\)](#)). However, advocacy of an idea cannot be prohibited merely because the ideas are themselves offensive to some of their hearers ([Leonard v Robinson, 477 F.3d 347 \(6th Cir. 2007\)](#)).

Note: Although “a State may punish those words which by their very utterance inflict injury or tend to incite an immediate breach of the peace . . . including fighting words . . . inciting or producing imminent lawless action . . . [and] a true threat,” ([Virginia v Black, 538 US 343 \(2003\)](#)), the U.S. Supreme Court has noted: “[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” ([Terminiello v Chicago, 337 US 1 \(1949\)](#))

1.2 Brandishing a Firearm (90-Day Misdemeanor) [MCL 750.234e](#)

Elements of Brandishing a Firearm

- a. Willfully and knowingly point, wave about, or display a firearm in a threatening manner.
- b. With the intent to induce fear in another person
- c. While in public

Note: Enforcement action may only be taken if there is probable cause to believe the firearm was pointed, waived about, or displayed in a threatening manner and it was done with the specific intent to induce fear in another person. Because the elements for brandishing a firearm and felonious assault under [MCL 750.82](#) are essentially the same, any facts and circumstances which would support the lawful arrest for brandishing a firearm would similarly support the lawful arrest for felonious assault.

Note: In a formal opinion from 2002 that remains binding on the MSP, Michigan's then Attorney General opined that when a person is carrying a firearm in plain view in a holster (i.e. open carry), they are not "waiving or displaying a firearm in a threatening manner." Consequently, such open carrying of a firearm does not constitute brandishing in violation of MCL 750.234e. ([OAG #7101 \(2-6-2002\)](#)).

Section 2: Michigan Election Law Violations

[Prohibited Conduct at Voting-Related Locations](#), and the [Michigan 2024 Law Enforcement Quick Reference Guide](#) were recently shared by the [State of Michigan Bureau of Elections](#), to highlight specific offenses and penalties found within [Chapter XXXV of Michigan Election Law](#). [MCL 168.31\(1\)\(h\)](#) provides it is generally the responsibility of the Secretary of State (SOS) to "investigate, or cause to be investigated by local authorities, the administration of election laws, and report violations of the election laws and regulations to the attorney general or prosecuting attorney, or both, for prosecution." Questions regarding violations of Michigan and federal elections law may generally be directed to the Michigan Bureau of Elections at 517-335-3237 or elections@michigan.gov. Citizens experiencing or witnessing voter intimidation at a polling place, or an early voting location are encouraged to contact the Michigan Department of Attorney General at 517-335-7659 or miag@michigan.gov.

Enlisted members shall exercise sound discretion in deciding whether immediate enforcement action is appropriate or necessary for any election law violation that does not involve an imminent threat to health or public safety. [MCL 168.941](#) establishes a general duty on all Michigan peace officers to "forthwith institute criminal proceedings" when they are "present" and have "knowledge of any violation" of Michigan election law. Such duty shall be carried out in accordance with established constitutional policing principles applicable to any other citizen encounter, detention, or arrest.

Note: Every elector is privileged from arrest while going to, attending, and returning from elections in all cases except for treason, felony, or breach of the peace. ([MCL 600.1825](#))

2.1 Election Law – Intimidating Election Workers (93-day Misdemeanor) [MCL 168.931b\(1\)](#)

Elements of Intimidating Election Workers

- a. Intimidates an "election official" because of the election official's status as an election official

- b. With the specific intent of interfering with the performance of that election official's election-related duties.

Note: "Intimidate" means a willful course of conduct involving harassment of another individual that is intended to cause the individual to fear physical injury, that would cause a reasonable individual to fear physical injury, and that actually causes the individual to fear physical injury. Intimidate does not include constitutionally protected activity or conduct that serves a legitimate purpose.

Note: This section does not apply to constitutionally protected activity, including, but not limited to, engaging in reporting, news gathering, protesting, lobbying, advocacy, or other activities intended to inform or influence the public or public officials, including election officials, on matters of public interest or public concern.

2.2 Election Law – Interfering with Election Workers (93-day Misdemeanor) [MCL 168.931b\(2\)](#)

Elements of Interfering with Election Workers

- a. Prevents an "election official" from performing the election official's "duties" in conducting an election.

Note: This section does not apply to constitutionally protected activity, including, but not limited to, engaging in reporting, news gathering, protesting, lobbying, advocacy, or other activities intended to inform or influence the public or public officials, including election officials, on matters of public interest or public concern.

2.3 Election Law – Bribing/Intimidating Voters (felony) [MCL 168.932\(a\)\(1\)](#)

Elements of Bribing/Intimidating Voters

- a. Attempted, either directly or indirectly
- b. By means of bribery, menace, or other corrupt means or device
- c. To influence, deter, or interrupt a voter in giving his or her vote in an election

Note: Prior to taking enforcement action for an alleged violation, enlisted members must be able to articulate probable cause to believe the person had the *specific intent* to influence, deter, or interrupt a voter by means of bribery, menace, or other corrupt means or device.

Note: As a general matter, unless a person is otherwise in violation of the law, it is not an act of "bribery, menace, or other corrupt means or device" for the person to lawfully assemble or engage in expressions of speech protected by the Constitution.

Section 3: Firearms – Prohibited Premises

This section contains the three statutes which generally regulate the possession of firearms on specific premises.

3.1 Prohibited Premises - Concealed Pistol License (CPL) Holders

As found in [MCL 28.425o](#) of the [Firearms Act](#), this prohibition only applies to non-exempt CPL holders carrying concealed pistols or electro-muscular disruption (EMD) devices (i.e. Taser) on certain prohibited premises.

3.2 Prohibited Premises - Firearms Chapter of Michigan Penal Code (MPC)

As found in [MCL 750.234d](#) of the [Firearms Chapter of the MPC](#), this prohibition does not apply to CPL holders possessing firearms on any of the listed premises.

3.3 Weapons Free School Zones (MPC) - Firearms Chapter of Michigan Penal Code (MPC)

As found in [MCL 750.237a](#) of the [Firearms Chapter of the MPC](#), this prohibition does not apply to CPL holders possessing firearms/pneumatic guns on school property.

PROHIBITED PREMISES

| MCL 28.425o* CONCEALED PISTOLS / “EMD DEVICES” | MCL 750.234d ALL FIREARMS | MCL 750.237a(4) ALL FIREARMS / PNEUMATIC GUNS |
|--|--|---|
| NOTE: Only applies to CPL holders carrying concealed pistols or EMD devices | NOTE: Does not apply to CPL holders licensed by any state | NOTE: Does not apply to CPL holders licensed by any state |
| School or school property with exceptions for dropping off and picking up | A depository financial institution (e.g., bank or credit union) | Weapon free school zone (school and school property) |
| A public or private childcare center or day care center, public or private child caring institution, or public or private child placing agency | A church or other house of religious worship | “School” means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. |
| A sports arena or stadium | A court** | “School property” means a building, playing field, or property used for school purposes to impart instruction to children or used for functions and events sponsored by a school, except a building used primarily for adult education or college extension courses. |
| A bar or tavern where sale and consumption of liquor by the glass and consumed on the premises is the primary source of income ***This subdivision does not apply to an owner or employee of the business*** | An establishment licensed by the Liquor Control Code of 1998, 1998 PA 58 (MLCC) | |
| Property owned or operated by a church or other place of worship, unless permitted by presiding official(s) | A sports arena | |
| Entertainment facility with 2,500 or more seating capacity | A day care center | |
| A hospital | A hospital | |
| Dormitory or classroom of a community college, college, or university | A theater | |
| Casino | | |
| The above, with the exception of a casino, does not apply to the following individuals who have a CPL obtained under the Firearms Act: <ul style="list-style-type: none"> • Retired police officer or retired law enforcement officer • Individual employed or contracted for security for an entity described above and is required to carry a concealed firearm on the premises of the entity • Individual licensed as a private investigator or private detective under Michigan law. • County sheriff’s department corrections officer or certain retirees • MSP motor carrier officer • MSP capital security officer • Sheriff’s posse member • Auxiliary officer or reserve officer of a police or sheriff’s department • Michigan Department of Corrections (MDOC) parole, probation, or corrections officer or absconder recovery unit member who has obtained a MDOC weapons permit, or certain retirees • State court judge or retired state judge • Court officer • Peace officer | Does not apply to the following: <ul style="list-style-type: none"> • Individual who owns, or is employed by or contracted by, an entity described above if the possession of the firearm is to provide security services for that entity • Peace officer • Individual licensed by this state or another state to carry a concealed weapon • Individual who possesses a firearm on the premises of an entity described above with the permission of the owner or agent of the owner of the entity | Does not apply to the following: <ul style="list-style-type: none"> • Individual employed by a school if the possession of the firearm is to provide security services for the school • Peace officer • Individual licensed by this state or another state to carry a concealed weapon • Individual who possesses a firearm with permission of school’s principal or agent under certain conditions • Individual 18 years of age or older who is not a student while transporting a student to or from school under certain conditions. |
| Penalty: 1 st violation = state civil infraction 2 nd violation = 90-day misdemeanor 3 rd violation+ = 4-year felony | Penalty: 90-day misdemeanor | Penalty: 93-day misdemeanor |

*Does not include the parking areas. Applies to Michigan CPL holders and out-of-state residents who are licensed by their state of residence to carry a concealed pistol (e.g., Ohio resident with Ohio CPL)

**Courts also prohibit weapons by local court order which would apply to everyone except as provided in the court order

Section 4: Constitutional Issues:

Informational/Voluntary Contacts: Because of the voluntary nature of such contacts, enforcement members are not required to articulate any level of suspicion that a crime has occurred or is occurring so long as the individual contacted remains free to end the contact at any time or otherwise leave without interruption or delay.

Note: Although the courts have recognized the consent exception to the search warrant requirement, enforcement members shall remain objective when there appears to be no articulable reason for requesting consent to search. Enforcement members shall not conduct a consent search except when their observations and investigation indicate a need to do so based on an articulable reason. Members should reference official orders on searches.

Investigatory Detention: In order to detain an individual, enforcement members must be able to articulate specific facts and circumstances that would cause a reasonable law enforcement officer to suspect that the person being stopped is committing, has committed, or is about to commit a crime (i.e. reasonable suspicion).

Note: Any investigatory detention must be temporary and last no longer than is necessary for the enforcement member to quickly confirm or dispel his or her suspicion. Any continuation of the detention for other investigative purposes, absent reasonable suspicion or probable cause, no matter how slight, is prohibited. See [Rodriguez v U.S., 575 U.S. 348 \(2015\)](#).

Pat-Down/Frisk: In order to lawfully pat-down or frisk an individual, the investigatory detention must be lawful, and the enforcement member must be able to articulate specific facts and circumstances that would cause a reasonable law enforcement officer to suspect the person stopped is armed and dangerous (i.e. reasonable suspicion).

Note: There is no general officer safety exception to the search warrant requirement and the lawful authority to conduct a brief investigatory detention does not allow enforcement members to automatically pat-down or frisk an individual for general officer safety. See [U.S. v Noble, 762 F.3d 506 \(6th Cir. 2014\)](#).

Arrest: In order to arrest an individual, enforcement members must be able to articulate specific facts and circumstances that would cause a reasonable law enforcement officer to believe that an enforceable crime has occurred or is occurring, and that the person being arrested committed the crime (i.e. probable cause). Such probable cause must exist as to every element of the crime that forms the basis of an arrest.

Warrantless Arrests: [MCL 764.15](#) authorizes an enforcement member, otherwise acting within the scope of his or her lawful authority, to arrest a person without a warrant under the following circumstances:

- a. A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence. [MCL 764.15\(1\)\(a\)](#)

Note: Except for any misdemeanor occurring on "school property," enforcement members are prohibited from making any warrantless arrest for any offense punishable by 90 days or less unless it is committed in the arresting officer's presence.

- b. The person has committed a felony although not in the peace officer's presence. [MCL 764.15\(1\)\(b\)](#)
- c. A felony in fact has been committed and the peace officer has probable cause to believe the person committed it. [MCL 764.15\(1\)\(c\)](#)
- d. The peace officer has probable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and probable cause to believe the person committed it. [MCL 764.15\(1\)\(d\)](#)
- e. The peace officer has probable cause to believe any misdemeanor has taken place or is taking place on school property and probable cause to believe the person committed or is committing the violation, regardless of whether the violation was committed in the peace officer's presence.

Note: "School property" means a building, playing field, or property used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by a public, private, denominational, or parochial school, except those buildings used primarily for adult education or college extension courses. [MCL 333.7410\(8\)\(b\)](#)

Right to Resist Unlawful Police Conduct: While a person may not resist a police officer who is lawfully performing his or her duties, Michigan's resisting and obstructing statute ([MCL 750.81d](#)) does not limit an individual's common-law right to resist illegal police conduct, including unlawful detentions, pat-downs, arrests, and entries into constitutionally protected areas. In any resisting and obstructing case, the prosecutor must prove the officer's actions were lawful. See [People v Moreno, 491 Mich 28 \(2012\)](#).

Duty to Intervene: All enforcement members have an affirmative duty to intervene to protect the constitutional rights of citizens from infringement from other law enforcement officers. An enforcement member who fails to intercede is liable for the preventable harm caused by the actions of the other officers where the enforcement member observes or has reason to know that excessive force is being used, a citizen has been unjustifiably arrested, or any constitutional violation has been committed by a law enforcement official. See [Ortiz v Kazimer, 811 F.3d 848 \(6th Cir. 2016\)](#); [Bunkley v City of Detroit, 902 F.3d 552 \(6th Cir. 2018\)](#).

First Amendment – Retaliation: Police officers are held to a higher standard under the First Amendment than average citizens in tolerating coarse verbal criticism or profanity. Fits of rudeness, lack of gratitude, profanity, or displaying a middle finger are not illegal, punishable, or grounds for a seizure. An enforcement member who seizes or detains a person for engaging in constitutionally protected conduct without proper justification may be held personally liable in a free speech retaliation claim if the person can show they were (1) "engaged in constitutionally protected speech," (2) "suffered an adverse action likely to chill a person of ordinary firmness from continuing to engage in protected speech," and (3) "the protected speech was a substantial or motivating factor in the decision to take the adverse action." [Cruise-Gulyas v Minard, 918 F.3d 494 \(6th Cir. 2019\)](#); [Wood v Eubanks, 25 F.4th 414 \(6th Cir. 2022\)](#)

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