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A Primer on Michigan's Criminal Justice System



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Introduction

A free society depends on the rule of law. Citizens cannot enjoy the full blessings of liberty and prosperity if they are routinely threatened by violence or if there is no reliable mechanism to discourage and penalize wrongdoing. The tool used for these purposes is the criminal justice system.

Most people never come in direct contact with this system and go about their daily lives without having to know much about it. Even those who do interact with the criminal justice system at one time or another do not necessarily grasp how it works on account of its complexity. But it is an extremely important tool that everyone nevertheless relies on to administer justice and help protect the public.

Administering justice is an incredibly complex endeavor. At the state level, lawmakers are continually defining new crimes while various administrative agencies pass new rules and regulations that are criminally enforceable.* Citizens, who are expected to understand and comply with the massive number of laws in Michigan, pay taxes to cover the expense of maintaining 80 jails and 29 state prisons.† Layers of law enforcement agencies patrol highways, municipalities, natural areas, tribal lands and public institutions. Three types of trial courts hear cases in nearly every county, many of them also specializing in dealing with certain classes of offenders, such as veterans or those suffering from mental illness. Counties run probation programs and other alternatives to incarceration, while the Michigan Department

* Under Michigan law, administrative agencies may use administrative rulemaking to create crimes when a state statute specifically provides for that authority. See MCL § 24.232(3).

† All counties have jails except for Luce, Keweenaw and Oscoda, according to the Michigan Sheriff's Association, based on a phone conversation with the author on Jan. 4, 2018. The Michigan Department of Corrections maintains 31 facilities: 29 prisons, one "bootcamp," formally known as a "special alternative incarceration" facility, and the Detroit Reentry Center, which transitions prisoners out of incarceration. It also operates the Detroit Detention Center, which incarcerates people for short periods as they await trial. Robin R. Risko, "Budget Briefing: Corrections" (Michigan House Fiscal Agency, Jan. 2018), <https://perma.cc/B3TR-R8TC>.

of Corrections incarcerates and attempts to rehabilitate offenders, and supervises parolees. All of this and more must happen at the local, state and federal level concurrently — adding up to a complex system with hundreds of moving parts.

This system is expensive to operate. In 2017, Michigan lawmakers allocated over \$2.6 billion of state revenue for departments that make and execute criminal justice policy, including the attorney general, the corrections department, the judiciary and the state police.¹ And this figure does not include the costs of all the county-level and municipal-level courts — jails, sheriffs, police forces and ordinance bureaus that are funded by taxpayers locally.

The complexity and expense of maintaining this system have been steadily rising, fueling the growing debate about the effectiveness of Michigan's criminal justice system. In recent years, lawmakers have repeatedly considered a variety of reforms and implemented some changes.² But many stakeholders agree that there are more improvements that could be made.³ In light of these ongoing discussions, this primer aims to provide a thorough description of Michigan's existing justice systems, with the intent of helping policymakers make better informed decisions.

This report describes the basics of how Michigan's criminal justice system works: explaining some essential features of criminal law, the various layers of law enforcement, adjudication processes, prison policy and more. Unlike most policy papers, however, this report is meant to be strictly descriptive. That is, it does not attempt to judge the effectiveness of Michigan's current criminal justice system or provide policy recommendations. It is hoped that the information contained here will contribute to more informed debate about how to best improve Michigan's criminal justice system.

CHAPTER I

CRIMINAL LAW

Criminal law is the foundation on which all elements of a criminal justice system rest. It determines what behavior is outlawed so that citizens are put on notice and so that police officers know when to make arrests. It sets different penalties for crimes so judges know how to punish offenders and the corrections department knows how long to incarcerate them. It is also layered: Each jurisdiction with a governing body can and typically does enact its own criminal laws. Congress creates federal laws, the Michigan Legislature enacts state-level crimes and local municipalities institute ordinances. This section will deal with state-level and municipal-level criminal law, describing the legislative process for enacting crimes and explaining the characteristics of crimes and civil infractions.

Establishing Criminal Laws

Michigan criminal law derives from “common law,” which is the Anglo-American foundation of modern law. Common law is the product of centuries of legal precedent created in courtrooms by judges and recognized in Michigan by the state constitution.⁴ Some crimes that originate under common law are confirmed in state statute.⁵ However, new additional crimes are created through the normal legislative process: a lawmaker introduces a bill in the House or Senate and the bill follows all the regular procedures for enacting proposed legislation into law.

A 2013 Mackinac Center report estimated that there are over 3,100 crimes in statute in Michigan and that the Legislature enacts an average of about 45 new crimes every year.⁶ But the Legislature is not alone in defining criminal activity. State regulatory agencies are empowered by the Legislature to enact, enforce and adjudicate their own criminally enforceable administrative rules, which number in the thousands as well.^{*}

In 1986 the Legislature established a commission to study criminal and civil laws: the Michigan Law Revision Commission.[†] The MLRC is responsible

^{*} Although, as noted above, state regulatory agencies do not have the same broad authority as federal agencies to create crimes via administrative rule. Agencies require a state statute to grant them that authority in Michigan. MCL § 24.232(3).

[†] MCL § 4.1401 et al. Although it does not directly influence the enactment of laws, the Legislature

for reviewing the state’s laws and judicial decisions to identify “defects or anachronisms” and to recommend reforms.⁷ Its members are appointed by the Legislative Council, a bipartisan, bicameral body that provides research and bill drafting services to legislators and is co-chaired by the Senate Majority Leader and the Speaker of the House.⁸

Crimes and Civil Infractions

There are three categories of statutory legal violations: misdemeanor crimes, felony crimes and civil infractions.^{*} Every offense is specified in state law, administrative code or municipal ordinance, and the language of each ordinance or statute should detail the nature of the offense and the maximum penalty for violating it.

Misdemeanors

A misdemeanor is the more minor of the two main categories of crimes, and it is estimated that there are nearly 1,900 state misdemeanors on the books in Michigan.⁹ A misdemeanor is defined as a violation of a state law or local ordinance punishable by a fine or a short period of incarceration in a county jail — typically up to one year — or both.[†] They are the default definition for violations of state statutes: any infringement of state law that is not specifically defined as a felony or as a civil infraction is defined as a misdemeanor.[‡]

.....
 also created the Criminal Justice Policy Commission to advise lawmakers on the potential costs and benefits of different criminal justice- and corrections-related statutes. The statutes establishing this commission were repealed on Jan. 12, 2019. MCL § 769.32a et al.

^{*} Common law offenses are recognized but not specifically enumerated in statute.

[†] MCL § 750.8. Note that the fact that a crime is punishable by incarceration does not mean that all or even most misdemeanants will serve time. The phrase simply serves to distinguish a misdemeanor as a crime, which allows the government to incarcerate an offender, from a noncriminal civil infraction, which is not punishable by incarceration.

[‡] MCL § 761.1(n) defines a misdemeanor as “a violation of a 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.” The term “misdemeanor” is often used interchangeably with the term “minor offense,” which is defined by MCL § 761.1(m) as “a misdemeanor or ordinance violation for which the maximum permissible imprisonment does not exceed 92 days and the maximum permissible fine does not exceed \$1,000.00.”

Further, any prohibition defined in state law that does not include a specific penalty is treated as a misdemeanor.* Generally, misdemeanors are characterized as less serious crimes and carry a lighter penalties than felonies.

Misdemeanors contained in state statutes are enforced by local and state police and processed in district court.† The most common misdemeanors are things like low-level assault, vandalism and shoplifting.¹⁰

State law enables municipalities to create their own misdemeanors using local ordinances.‡ These are enforced by local police agencies and prosecuted by a city or township attorney in municipal or district court. Local ordinance violations are commonly punishable by probation and up to 93 days in jail or up to a \$500 fine or both.¹¹

Probation is also a common penalty for misdemeanors. It subjects misdemeanants to the supervision of the court for a set term of weeks or months. It may require them to observe curfews, participate in community service, undergo substance abuse or mental health treatment, or meet other requirements imposed by a judge and enforced by a probation officer.¹²

Felonies

A felony is defined as a crime punishable by incarceration for more than one year in state prison.¹³ Felonies are generally more serious offenses than misdemeanors. Estimates suggest that there are around 1,200 felonies

* See MCL § 750.9: “When the performance of any act is prohibited by this or any other statute, and no penalty for the violation of such statute is imposed, either in the same section containing such prohibition, or in any other section or statute, the doing of such act shall be deemed a misdemeanor.”

† See Chapter III for more information.

‡ MCL § 117.3(k) empowers cities to adopt ordinances that correspond to state misdemeanors. Local governments are not allowed to pass ordinances that conflict with state law or that regulate an area that has been pre-empted by state law, such as the right to own a firearm. However, in cases where both a state law and a municipal ordinance appear to have been violated, such as a traffic incident, the law enforcement officer on scene must decide whether to process the violation under state or local law. MCL § 123.1102. For more information, see: “Municipal Prosecution: Distribution of Fines and Costs” (Michigan Municipal League, Nov. 2007), <https://perma.cc/UFF3-UAP6>.

on the books in Michigan.¹⁴ Felonies are distinct from misdemeanors, although some crimes — such as domestic abuse and drunk driving — can be prosecuted as misdemeanors for the first offense and as felonies for subsequent offenses.¹⁵ Felony convictions can result in a loss of rights even after a sentence has been served, such as the right to bear arms or obtain a state license to work in a certain occupation.*

Felony Sentencing

There are six groups of felony crimes in Michigan. These groups organize felonies of a similar nature, and each group is further divided into eight classes of crimes based on the severity and maximum prison sentence that may be imposed for each class.¹⁶ However, felons rarely serve the maximum sentence associated with their crime.†

The six felony groups are:

1. Crimes against a person, such as kidnapping, armed robbery and criminal sexual conduct;
2. Crimes against property, such as retail fraud, forgery and larceny;
3. Crimes involving a controlled substance, such as illegally selling prescription drugs and manufacturing controlled substances or imitations of controlled substances;
4. Crimes against public order, such as identity theft, refusal to support spouse or children and falsely reporting a felony;
5. Crimes against public safety, such as operating a vehicle while intoxicated and fleeing a police officer;

* “State & Federal Rights & Privileges Lost upon Conviction of a Felony” (Michigan Department of Civil Rights), <https://perma.cc/3KNF-MT79>. Misdemeanors can also result in some loss of rights as well, though these are typically smaller and more closely tied to the nature of the offense. For example, someone convicted of a misdemeanor related to fraud, theft or drugs is ineligible for a medical marijuana facilities license for five years. MCL § 333.27402.

† In 2012, only 7 percent of Michigan inmates released from prison “maxed out,” or served their entire maximum sentence before being released. “Max Out: The Rise in Prison Inmates Released Without Supervision” (The Pew Charitable Trusts, June 2014), <https://perma.cc/4CKB-4N6R>.

6. Crimes against public trust, such as embezzlement and bribery.*

The eight felony classes used for the purposes of sentencing are not indicated in individual criminal statutes — in fact, the Legislature did not devise the crime classes; rather, they are a feature of the Michigan Sentencing Guidelines, which guide judicial decisions about appropriate sentences for a given crime.† A crime's class indicates the maximum recommended penalty an individual should serve if convicted. Because the same type of crime can result in a varying degree of harm, many crimes span multiple classes. The eight classes of felony crimes are lettered as follows:

- Class A: Lifetime imprisonment
- Class B: Up to 20 years
- Class C: Up to 15 years
- Class D: Up to 10 years
- Class E: Up to 5 years
- Class F: Up to 4 years
- Class G: Up to 2 years
- Class H: Only jail “or other intermediate sanction”¹⁷

In addition to prison time, felony sentences can include probation, fines — felony statutes contain the maximum fine that may be imposed for each crime — and restitution to victims.

Sentences for felonies are determined by taking a variety of factors into account, including the felony group, unique circumstances of the crime and the convict's criminal history.‡ People convicted of a felony are investigated by the Michigan Department of Corrections prior to sentencing to help the

* MCL § 777.5. The Michigan Sentencing Guidelines also contain a chart that lists crimes along with their group, class and MCL reference. “Michigan Sentencing Guidelines Manual” (Michigan Judicial Institute, June 2016), <https://perma.cc/X4FQ-Y7WS>.

† According to the Michigan Sentencing Guidelines Manual, “There is no legislative authority for the division of felonies into crime classes, and therefore, there is no prohibition against assigning an offense to a crime class that is inconsistent with the statutory maximum penalty for that offense.” “Michigan Sentencing Guidelines Manual” (Michigan Judicial Institute, June 2016), <https://perma.cc/X4FQ-Y7WS>.

‡ MCL § 777.31-49a contains the variables that need to be considered for making sentencing determinations.

judge determine an appropriate sentence. Depending on the aforementioned factors and the result of the MDOC investigation — detailed in a “presentencing report” — a judge may opt to order probation and allow the probationer to serve time under court supervision.*

Felons who are not given probation are sentenced to serve time in a state prison. Michigan uses a system called “indeterminate sentencing” to calculate an appropriate prison sentence. In most cases, the sentence is expressed as a term of years that range from a minimum sentence to a maximum sentence.† Generally, the minimum is set by a judge with help from the Michigan Sentencing Guidelines, while the maximum is established in the statute that defines the felony crime. However, Michigan law contains several “mandatory minimums,” which require judges to impose minimum sentences that are specified in law, rather than calculated to fit an individual defendant's circumstances. For example, first-degree murder in Michigan carries a mandatory sentence of life in prison without the possibility of parole, while criminal sexual conduct involving a child carries a minimum sentence of 25 years in prison.¹⁸

The Michigan Sentencing Guidelines provide a range of recommended minimum sentences for an offender by accounting for an individual's criminal history and the severity and circumstances of his crime. It includes a set of charts which assign numerical values to these variables, resulting in an overall score. This score corresponds to a range of minimum sentences. Judges calculate the score and then select a minimum sentence that falls

* For more information about the presentencing report, see: “Policy Directive: Pre-Sentence Investigation and Report” (Michigan Department of Corrections, Sept. 1, 2012), <https://perma.cc/NXB8-6MBN>.

† Sometimes offenders are sentenced for multiple crimes that were committed at once, or the same crime committed more than once during a single interval (e.g., two “counts” of breaking and entering). Concurrent sentencing is the norm in Michigan, so generally a defendant convicted of multiple counts or multiple crimes arising from the same incident will receive multiple prison sentences and serve the sentences concurrently (*People v Alvarado*, 192 Mich App 718 (1992); *People v Lee*, 233 Mich App 403, 405 (1999)). For instance, two counts of B&E resulting in two 5-10 year sentences served concurrently means that the offender will serve a maximum of 10 years. For concurrent sentences for two distinct crimes, he will serve the longer of the two sentences fully. But there are exceptions to this rule. Some criminal statutes specify that the sentences for certain crimes must be served consecutively, not concurrently, with a sentence for another crime. The common example is the crime of using a firearm during the commission of a felony. This crime carries a mandatory two-year prison sentence that must be served consecutively with the sentence for the underlying felony. MCL § 750.520b(3); MCL § 750.227b.

within the range provided by the guidelines.* However, the guidelines are advisory and judges have discretion to depart from the recommended range and impose a different minimum sentence than the one within the range indicated by the guidelines' score.†

Michigan has a “truth in sentencing” law that requires felons to serve the entirety of their determined minimum sentence, without exception.‡ After that, convicts reach their “earliest release date,” upon which they become eligible for parole, which is a conditional release from prison, granted by the Michigan Parole Board.§ The Board reviews parole-eligible prisoners' cases regularly, but if a prisoner is not granted parole as a result of one of these reviews, they will serve the entirety of their maximum sentence behind bars.**

Civil Infractions

Civil infractions are statutory violations that are different from crimes. They are defined in Michigan as “an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered.”¹⁹

* Pursuant to MCL § 769.34, judges may not impose a minimum sentence that exceeds two-thirds of the maximum penalty contained in the criminal statute. (This is known as the “Tanner rule,” after the Michigan Supreme Court articulated it in *People v. Tanner* (*People v. Tanner*, 387 Mich 683 (1972)). *People v. Wright* holds that a prison sentence must be truly indeterminate and concludes that the Michigan Legislature intends “to provide a meaningful interval between the minimum and maximum sentences imposed.” *People v. Wright* 432 Mich 84 (1989).

† The guidelines were originally designed to be mandatory and executed that way, but became advisory after the state supreme court decided in *People v. Lockridge* that this system of mandatory minimum sentencing violates the Sixth Amendment to the U.S. Constitution (*People v. Lockridge*, 498 Mich 358 (2015)). For more information, see: “Criminal Proceedings Benchbook: Volume 2” (Michigan Judicial Institute, 2018), 3–22, 3–23, <https://perma.cc/9RYF-8F8B>.

‡ Michigan's “truth in sentencing” law was enacted in 1998. Previously, prison inmates could earn disciplinary or “good time” credits, which reward an inmate for good behavior by shortening his minimum sentence. “Truth in Sentencing Information” (Michigan Department of Corrections, 2018), <https://perma.cc/Z3RT-JBTF>.

§ The board is a statewide body with the sole authority to make parole decisions for every parolable inmate in Michigan prisons. It is comprised of 10 members appointed by the director of the Michigan Department of Corrections. MCL § 791.235; MCL § 791.231a.

** Offenders serving mandatory life sentences can never be paroled without a commutation or pardon from the governor. Other life sentences allow for the possibility of parole after 15 years (if the crime was committed after Oct. 1, 1992; otherwise it is 10 years). MCL § 750.316(1); MCL § 750.204(2)(e).

While they are enforced by the police and adjudicated in court, people who commit civil infractions are not criminally guilty nor subject to incarceration. Nor do they necessarily enjoy many of the constitutional protections afforded defendants in criminal prosecutions, such as state-appointed counsel, the Fifth Amendment right to remain silent or the Sixth Amendment right to a speedy trial or jury trial.²⁰

Civil infractions are a relatively new invention: They were created by the Legislature in 1978 “as a practical resolution of the difficulties and costs involved in providing a right to trial by jury for violations of the motor vehicle code, which, prior to [1978], were classified as misdemeanors.”²¹ Prosecuting and processing misdemeanor and felony crimes can be more time-consuming and expensive than enforcing civil infractions, which are usually resolved with fewer government resources. Since creating civil infractions to handle minor traffic offenses, the Michigan Legislature has expanded their use to include other types of violations and empowered municipalities to enact their own civil infraction ordinances.²²

Some common traffic civil infractions at the state level include texting while driving and disobeying traffic signals.²³ Some state civil infractions exist for failing to immediately disclose a concealed weapon when stopped by a law enforcement officer, improperly displaying a boat registration decal, and failing to complete a safety course prior to operating an off-road vehicle.²⁴ Municipal civil infractions could include littering, keeping an overgrown lawn or making excessive noise.*

Civil infractions are enforced by law enforcement officers, whose job it is to understand when a violation has occurred and whether the violation is a crime or a civil infraction. When an enforcement officer detects that a civil infraction has been committed, he initiates legal proceedings against the offender on behalf of the state or municipality that employs him by issuing the offender a citation, more commonly known as a ticket. A ticket is a legal document that serves two functions: it is a “complaint” that accuses the

* For more details about these and for examples of others, here is a list of civil infractions enforced by the city of East Lansing: “Civil Infraction Fines” (East Lansing City Hall, 2018), <https://perma.cc/XC4R-465L>.

offender of violating a law or ordinance and a “summons” that requires him to appear in court to answer the charge.²⁵

Courts usually make it possible to answer the summons by filing forms in lieu of physically appearing in court. The accused may answer the complaint in one of three ways: 1) admit responsibility for the violation and pay a fine (with or without providing an explanation); 2) deny responsibility and request an informal hearing — without attorneys — to explain to a judge what happened and why the accused should not be held responsible; or 3) deny responsibility and request a formal hearing — with attorneys — to dispute the allegation.²⁶ Hearings take place in the court with geographic jurisdiction — either a municipal court or a state district court — over the place where the alleged violation occurred.*

The strength of evidence, or “standard of proof,” that a judge needs to make a decision about whether an individual is responsible for a civil infraction differs from the evidence needed to assign guilt in a criminal case. When a person is accused of committing a crime, they are “innocent until proven guilty.” The prosecutor representing the government must prove “beyond a reasonable doubt” that the defendant committed the offense of which he is accused. He must also demonstrate that the defendant acted with “criminal intent” (the degree of intent necessary to result in a guilty verdict varies depending on the crime). For a finding of responsibility in a civil infraction action, however, the state’s burden of proof is lower — it must merely demonstrate that “the preponderance of the evidence” indicates that the accused was responsible for the alleged violation.²⁷

Most civil infraction adjudications do not require an inquiry into the accused’s state of mind, because most civil infractions are written so that it is possible to be found responsible even for unintentional violations — this is called “strict liability.”²⁸ Strict liability offenses do not require

the prosecution to prove that the accused intended to violate any law or rule. In these cases, the prosecution only has to demonstrate that the preponderance of evidence indicates that the accused violated the rule in order to hold him responsible.

A good example of a strict-liability offense is exceeding the speed limit in a vehicle. In determining whether to hold a driver responsible for speeding, the court would not ask whether the driver knew he was exceeding the speed limit or whether he meant to exceed it. The only relevant factor would be the fact that his vehicle was moving faster than traffic laws allow. If so, the court would hold the driver strictly liable for the civil infraction of speeding.

* Informal hearings are normally held by a district court magistrate, and parties are not allowed to be represented by attorneys; formal rules of practice, procedure and evidence do not apply. Magistrates make a decision based on the preponderance of the evidence; appeals are heard by judges. Formal hearings are heard by judges and parties are entitled to counsel — but not court-appointed counsel. The rules of procedure and evidence apply, and decisions are reached based on the preponderance of the evidence. *Michigan Court Rules Practice*, 6th ed., vol. 5 (Thomas Reuters, 2017), 702.

CHAPTER II

LAW ENFORCEMENT

Police agencies enforce state and local criminal laws and civil infractions. Their main responsibilities are to defend the public from criminal activity, apprehend offenders and deter citizens from violating the statutes and ordinances governing the jurisdictions where they live.

Law Enforcement Agencies in Michigan

There are 588 separate law enforcement agencies in Michigan, employing some 17,000 officers.²⁹ These agencies serve and are governed by a variety of jurisdictions, including:

- Counties, cities, townships and villages;
- Airports, railways and parks;
- Tribal areas; and
- Universities, community colleges and public schools.

The state of Michigan also maintains its own police force: the Michigan State Police.

Michigan State Police

The Michigan State Police was established in 1917 as a temporary domestic security force of 300 men during World War I. Known then as the Michigan State Constabulary, it was reorganized in 1919 as a permanent police force and today employs over 2,900 people. The state adopted a new constitution in 1963 that authorized the creation of 20 state departments and established the Department of the State Police of Michigan in a subsequent law in 1965.³⁰

State laws govern the structure and activities of the MSP, which include patrolling state highways, providing emergency response services, certifying special agents such as conservation or railway officers, maintaining a sex-offender registry and providing investigative services.³¹ A significant MSP function is to provide a variety of enforcement, investigation and support services to local law enforcement and other government agencies. The MSP employs officers and personnel to provide operations such as 911 administration, training and forensic science services, casino oversight

and tobacco tax fraud enforcement.³² In addition, MSP operates a field service called the Secure Cities Partnership, which provides services to several Michigan cities with the highest violent crime rates.³³ State police troopers have statewide authority to enforce state law, which helps ensure that criminals do not escape punishment for illegal activity in one county by fleeing to a different one.³⁴

MSP also provides grants to local agencies, local highway patrols, special traffic enforcement for commercial vehicles, disaster training and response, special operations like aviation and SWAT, and highway safety planning. It develops training criteria and law enforcement standards as well.³⁵

In fiscal year 2017, the MSP had a gross budget of about \$650 million, \$400 million of which is funded through the state's general fund.³⁶ The rest comes from the federal government, local agencies with service sharing agreements and private grants.*

County Sheriffs' Offices

The Michigan Constitution states that each county shall elect a sheriff.[†] The only elected law enforcement officers at the county level, sheriffs serve four-year terms and are constitutionally required to be independent and accountable. They may not hold any other office concurrently with their role as sheriff, and the county board of supervisors is not held liable for their conduct.³⁷

The sheriff's responsibilities are outlined in statute and case law, and include operating the county jail, enforcing county ordinances and state laws within the county, monitoring criminal activity and inadequately policed areas, providing security at the local courthouse and keeping records on jail usage

* In fiscal 2017, the Michigan State Police received over \$94 million in federal funding, amounting to 14 percent of its budget. Kent Dell, "Budget Briefing: State Police" (Michigan House Fiscal Agency, Jan. 2017), 6, <https://perma.cc/Z5WH-JT38>. Federal aid to local departments varies by department and source.

† Mich Const, art. 7, § 4. Michigan courts have held that "[t]he state has constitutionally delegated the duty of law enforcement to the county by providing for the office of sheriff." *Brownstown Township v Wayne County*, 68 Mich App 244 (1976).

and crime rates.³⁸ Although sheriffs' offices have jurisdiction to enforce state and county laws and ordinances anywhere within the county, they do not directly oversee the operations of local municipal or city law enforcement agencies.³⁹ County sheriffs' offices are funded by local taxes raised by their respective county commissions.⁴⁰

Local Police Departments

Local police departments are not constitutionally required in Michigan. Some cities opt to establish their own police department, while others partner with nearby municipalities or the county sheriff's department to provide law enforcement services. Municipal police chiefs are not elected; they are hired by a municipality's government and a local police officer's jurisdiction is generally limited to the boundaries of their employer's municipality.

The services provided by local police departments vary from place to place. These may include basic services such as responding to calls from citizens, patrolling roads and investigating crimes, but also services that may be specific to their jurisdiction's unique needs, such as providing educational programming, maintaining tactical units and operating crime labs. Indeed, a major benefit of having a local police department is that the community is in a position to support the policing services that meet its unique needs while maintaining control over how those services are provided.*

Local police departments are funded by the city that employs them, so a city may use special taxes or sell municipal bonds to fund the department.⁴¹ The state and federal governments make grants available to local departments as well.⁴²

If a municipality does not maintain its own dedicated police force, it may enter into a contract for dedicated policing services with its county or other municipality. It may negotiate the amount and type of services these

* For more information about factors that influence municipal officials when establishing their own police department, see: Deborah Spence, Barbara Webster and Edward Connors, "Guidelines for Starting and Operating a New Police Department" (U.S. Department of Justice), <https://perma.cc/G5E6-S42G>.

partnering entities provide. Some municipalities may pool resources, consolidating certain police functions to be shared, cross-deputizing police officers so they jointly serve both municipalities or entirely sharing a combined police department. Municipalities may also hire private security officers to provide additional law enforcement in a particular location, although this is not common; only Detroit Public Schools, Lansing School District and Wayne County Community College District maintain a private security police force.⁴³

Local police officers' priorities are dictated by their chief, who answers to a city council, township board or equivalent governing body. This relationship aims to ensure that the department focuses on issues of local importance.

Other Law Enforcement Agencies

Corporations, tribal governments, state departments and schools also employ law enforcement agencies with specialized responsibilities.

For example:

- Conservation officers are employed by the Department of Natural Resources to enforce DNR regulations and other state laws.⁴⁴
- Railroad police officers are employees of companies that own and operate railroads in Michigan. The state police are responsible for ensuring that these individuals are trained to the same standard as law enforcement officers, although railroad officers' authority is more limited in scope. They enforce state and local laws concerning railroads.*
- Tribal police officers are employed by one of Michigan's 12 tribal governments pursuant to federal law.⁴⁵ They can obtain a certification from the Michigan Commission on Law Enforcement Standards that grants them jurisdiction within the tribal territory to enforce state,

* The Michigan Commission on Law Enforcement Standards sets these standards for all law enforcement officers in Michigan. MCL § 462.377; "Licensing and Commissioning of Railroad Police Officers" (Michigan Commission on Law Enforcement Standards, 2018), <https://perma.cc/84B5-3SVU>.

federal and tribal law, meaning they may be tasked with everything from responding to emergencies and investigating crimes to enforcing conservation and gaming laws.⁴⁶ Several tribes have entered into “cross deputation agreements” with county sheriff’s offices and the Michigan State Police.⁴⁷ Deputation grants tribal police officers the authority to enforce state laws outside the bounds of the tribal reservation. It gives tribal police and county police the ability to enforce laws without having to stop and determine the identities of the victim and suspect or where they are in relation to the boundaries of tribal territory, which can be irregular and difficult to locate on the move.⁴⁸ Tribal police may also be commissioned as federal agents by the U.S. Bureau of Indian Affairs.⁴⁹

- University police, or public safety officers, as they are referred to in some places, are employed by all of the state public universities and many community colleges.* Per state law, university police officers have law enforcement authority on all property that is governed by a university’s boards of trustees.⁵⁰ Officers are responsible for enforcing state law and the ordinances of their university.† School districts may also manage their own police departments, although only the state’s largest K-12 district system — Detroit Public Schools — does.⁵¹
- Detroit Metropolitan, Gerald R. Ford International, Bishop International and Capital Region International airports all maintain police departments. The respective county airport authority employs the police force, which has jurisdiction within the airport boundaries and is responsible for general law enforcement activities, such as traffic control and emergency response, and special tasks like employing drug-sniffing dogs and locating and disarming explosives.⁵²

* Each state university’s website references a university-controlled law enforcement department.

† Occasionally this means that nonstudents may be subject to a university ordinance. For instance, in 2016, Michigan State University banned the use of tobacco on its property, which included publicly accessible roads used by nonstudents. Kahryn Riley, “MSU Car Smoking Ban Increases Potential for Community-Police Tensions: Health-Consciousness Posturing Not Worth the Cost,” *Michigan Capitol Confidential* (Mackinac Center for Public Policy, Aug. 3, 2016), <https://perma.cc/N773-B9DR>.

Federal Law Enforcement Agencies

The U.S. government delegates law enforcement authority to federal agencies, many of which have a presence in Michigan, such as the Federal Bureau of Investigation, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the U.S. Transportation Security Administration, U.S. Customs and Border Patrol, U.S. Forest Service and the National Guard. Federal law enforcement officers have jurisdiction over incidents that involve violations of federal law or that occurred on federally owned property or land. They may also work on local issues at the request of a local department or agency.

Judicial Law Enforcement

Although police officers are most commonly associated with upholding the law, their work interrupting and investigating crime and apprehending criminal suspects would not be effective if it were not followed up by judicial action. To that end, prosecutors who bring criminal charges and demand retribution on behalf of the public are an important element of law enforcement as well.

CHAPTER III

**THE MICHIGAN
JUDICIARY**

In the United States, the court system adjudicates crimes by weighing evidence and considering arguments about how the law should apply in a given case. American courts employ an adversarial system in which the interests of the people are represented by a prosecutor, while a defense attorney is hired or appointed by the court to represent the accused. Courts are given jurisdiction — that is, authority to hear and decide cases — based on geography and the subject matter of the case. In Michigan, the state constitution provides for the division of the judicial branch's power among courts with different jurisdictions, including the Michigan Supreme Court, the Michigan Court of Appeals and various lower-level courts.⁵³

In fiscal year 2017, the Michigan judiciary had a budget of about \$300 million. The state judiciary budget funds the operations of the Michigan Supreme Court, Michigan Court of Appeals and the compensation of judges serving in trial courts. This accounts for the vast majority of the spending, but the judiciary budget also supports a variety of other agencies and programs, such as the State Court Administrative Office, the Michigan Judicial Institute and supplies grants to trial courts which maintain specialty court dockets designed to handle drug treatment, mental health and veterans' affairs.⁵⁴

Trial Courts

The keystone of a criminal case is a trial at which a judge or jury weigh evidence and witness testimony to determine what facts can be proven about a case and whether the facts can prove the defendant's guilt. There are three primary types of trial courts in Michigan: district, circuit and probate. As mentioned, trial court judges are compensated by the state's judiciary budget, but costs of other court personnel and most other operations are funded by the municipality, county or group of counties that fall under the court's jurisdiction.⁵⁵

Michigan trial courts may opt to set aside resources or apply for state or federal grants to create specialty dockets for cases involving specific kinds of issues.⁵⁶ Known collectively as "problem-solving courts," these programs provide training, education, evaluation, treatment and monitoring in a variety of areas. As of 2017, Michigan had 185 such specialty courts focusing on sobriety, drug treatment, veterans' affairs, mental health and probation.⁵⁷

The goals of problem-solving courts are to provide accountability and recovery services to offenders to help them avoid incarceration. They operate on a team-based model that provides the offender with guidance and accountability from a group that may include judges, defense attorneys, probation officers, police officers or private treatment providers. These courts aim to reduce recidivism rates, substance abuse and unemployment among participants.

District Court

The Michigan Legislature established district courts in 1968 to hear some civil and minor criminal matters.⁵⁸ These courts replaced many of the municipal courts which had previously been serving Michigan cities.* Today, there are about 100 district courts in Michigan, overseen by judges who are elected to six-year terms.⁵⁹ Their jurisdiction is largely determined geographically and set in statute, with many district courts serving a single county. District courts handle civil cases with claims up to \$25,000, misdemeanor criminal cases, traffic violations and tickets and felony pretrial proceedings.⁶⁰ The Legislature added a Small Claims Division to district courts, which handles minor disputes that can be resolved without lawyers, a jury, formal rules of procedure and evidence, or the ability to appeal to a higher court.⁶¹

Circuit Court

There are 57 circuit courts in Michigan, established by the Michigan Constitution and overseen by judges who are elected to six-year terms.⁶² Their geographic jurisdiction is determined by the Michigan Supreme Court and usually comprises a county or two.⁶³

Circuit courts handle civil cases with \$25,000 or more in claims, felony criminal cases, and appeals from district courts and administrative

* Only a handful of cities have retained their municipal courts, including Grosse Pointe, Grosse Pointe Farms, Grosse Pointe Park, Grosse Pointe Shores and Grosse Pointe Woods. "Michigan Trial Courts," in *Michigan Manual 2009-2010* (Michigan State Court Administrative Office, 2009), V-25-V-26, <https://perma.cc/8CJD-UHC3>.

tribunals.⁶⁴ In 1998, the Legislature added the Family Division to the circuit court, which handles matters that had previously been divided between circuit and probate courts, such as issues concerning divorce, paternity, adoptions and juvenile offenses.⁶⁵

Probate Court

There are 78 probate courts in Michigan — one per county, except where sparsely populated counties have consolidated their courts.⁶⁶ These courts are established by the Michigan Constitution, and probate judges are elected to six-year terms.⁶⁷ Probate courts hear matters related to wills, trusts, and estates, and have the power to appoint guardians and require services for vulnerable individuals such as children, those suffering from mental illness or physical disability.⁶⁸

The Court of Appeals

When parties to a trial are not satisfied with the outcome of a case, they may appeal the decision to a higher court that has the authority to alter or reverse a lower court's decision.* Most district court cases and some probate court cases get appealed to circuit courts, while other probate and all circuit court cases get appealed to the statewide Court of Appeals.⁶⁹

Despite its name, the Court of Appeals does not hear every appeal. Cases from lower courts can be appealed to the COA in one of two ways. Certain types of cases include an automatic right to an appeal, while others require appellants to ask the court for permission to appeal.⁷⁰ The COA has discretion over whether it will grant permission, or “leave to appeal.” In a small number of instances — such as cases involving funding disputes between the state and a local government — a case will begin in the COA rather than in a trial court.⁷¹

* There does not have to be a trial to have an appeal — pleas, sentences and other matters may be appealed. MCR § 7.203(A).

The COA's function is to review the lower court's decision and determine whether it correctly interpreted the law.* Thus, the appeal proceedings do not involve witnesses or evidence and may not even involve arguments. Attorneys may simply be asked to submit briefs that explain their arguments to a panel of judges and receive a written decision later.⁷² If judges do wish to hear oral arguments, they will invite attorneys for each side to present their arguments. The attorneys will not object or interrupt one another, but the judges may question each attorney about their argument and about the law.

The COA is composed of 24 judges elected by voters statewide from one of four districts based in Detroit, Troy, Grand Rapids and Lansing.⁷³ Appellate cases are heard year-round by three-judge panels selected randomly from the entire appellate bench, and case decisions are made by majority rule.⁷⁴ Parties to appellate court cases may petition the Michigan Supreme Court to hear an appeal of the decision of the COA.

The Michigan Supreme Court

The Michigan Supreme Court is the state's “court of last resort,” meaning that its decisions are final, and for cases arising under state law, are not able to be appealed. Seven justices are elected statewide to eight-year terms and hear cases primarily from litigants seeking review of decisions made by the COA.⁷⁵ The Supreme Court has discretionary authority, meaning that the justices select the relatively small number of cases the court will consider from among the 2,000 or so applications it receives annually. The Court makes its selections based on the novelty, complexity or importance of a case. The Court sits in Lansing and hears cases during annual terms that begin in August.⁷⁶ The Supreme Court is also responsible for establishing statewide court rules of legal practice and procedure and has general administrative supervisory authority over all state courts.⁷⁷

* Appellate proceedings do not consider questions of fact; the factual record of an incident or dispute is established using evidence introduced at the trial level. *Admiral Ins v Columbia Cas Ins*, 194 Mich App 300, 305 (1992). Appellate courts can, depending on the case, review the factual record established at the trial level, but that record will be upheld unless demonstrated that it is clearly erroneous. If the court determines that insufficient information was gathered at trial, the COA can remand, or send back, a case to trial court for further fact-finding. “Appeals & Opinions Benchbook” (Michigan Judicial Institute, 2018), 1–12, <https://perma.cc/85RK-WVNP>.

Native American Tribal Courts

There are 12 federally recognized Native American tribes in Michigan.⁷⁸ The state of Michigan does not have legal jurisdiction over tribe members when they are on tribal territory; the tribal governments each offer their own judicial services that generally include a judge, prosecutor and court administrator.⁷⁹ As noted on one tribal court website, the maintenance of a court “is a hallmark of a government and an exercise of our tribe’s sovereignty.”⁸⁰ The Michigan Supreme Court adopted a rule in 1996 that allows judgments of tribal courts to be recognized and enforced by the state courts, as long the tribe reciprocates by passing some kind of measure obligating its courts to give legal effect to the decisions made in Michigan courts.⁸¹

Federal Courts

While the Michigan judiciary hears cases involving state law, federal judges located in Michigan decide matters that involve federal law, very large sums of money or a party from another state.⁸² Michigan’s use of district, circuit and appellate courts mirrors the division of authority at the federal level. There are two federal district courts, the Eastern District of Michigan and Western District of Michigan.⁸³ District courts are the lowest courts in the federal system, and they hear trials similar to those in state-level circuit courts. Appeals from federal district courts are heard in the United States Court of Appeals, which is divided into 13 circuits. Michigan is under the jurisdiction of the U.S. Court of Appeals for the Sixth Circuit, along with Kentucky, Ohio and Tennessee.⁸⁴ People who want to appeal the federal appellate court decision in their case must request a “writ of certiorari” from the Supreme Court of the United States. Like the Michigan Supreme Court, the U.S. Supreme Court has discretion to decide which cases it will hear and only grants “writs” to a small fraction of applicants each term.⁸⁵

CHAPTER IV

CORRECTIONS & REHABILITATION

Not all crimes are prosecuted and not all criminal trials will proceed all the way to a verdict and sentencing. But those that do often result in a confinement sanction designed to punish criminal wrongdoing, deter future crime and rehabilitate offenders.

There are three types of confinements: lock-ups, jails and prisons. Lock-ups are temporary holding cells housed by local police departments, courthouses or jails and funded by local governments. These help local officials manage short-term detentions, often just overnight, that are either required for public safety or ordered by a court. Confinement in a lock-up cannot exceed 72 hours.⁸⁶

Jails are for convicted offenders who receive relatively short sentences. Jails are maintained by county sheriffs' offices, funded by county commissions and designed to house inmates for up to a year.* There are 80 such jails in Michigan.⁸⁷ Some counties offer programming for jail inmates to earn their GED diploma or receive vocational or workplace skills programs.⁸⁸ Michigan law authorizes county jails to charge inmates fees to help cover the cost of housing them. Jails may charge inmates up to \$60 per day, but the daily rate varies by county.⁸⁹

Prisons are for individuals convicted of a crime and sentenced to serve more than a year in confinement. There are 30 prisons in Michigan, overseen by the Michigan Department of Corrections.⁹⁰

Michigan Department of Corrections

In fiscal year 2017, MDOC's total spending from all revenue sources totaled just over \$2 billion, with \$1.95 billion coming from state support and about \$5.5 million coming from federal revenue.⁹¹ The Michigan House Fiscal Agency estimated that the per-prisoner cost for just expenses directly associated with prisoner custody, care and programming is about \$35,000 annually, but the actual cost varies substantially by prisoner security level.⁹²

* MCL § 801.1; MCL § 801.4a; MCL § 51.75; MCL § 791.262(c). Offenses like retail fraud, driving under the influence and the malicious destruction of property would be minor offenses that might result in a short jail stay.

Prison Population

Because prisoners enter and leave Michigan prisons every day, the size of the prison population varies day-to-day. This constant flux is driven by three factors: the number of people entering the prison system, the average length of their stay and the number of people who are released.

Prison intake comprises the number of new felons sentenced to prison, parole and probation violators who are sentenced to or returned to prison, prisoners who receive new, additional sentences and anyone apprehended after having escaped from prison.* In 2015, 47,480 people were convicted of a felony, and 21.4 percent of those people went to prison.⁹³ These new prison sentences make up nearly half of the total prison intake.⁹⁴

The average length of a prisoner's stay is another contributing factor to the size of the overall population. Michigan prisoners serve longer average sentences than prisoners in other states, about 4.3 years compared to 2.9 years nationally.⁹⁵ This is thought to be due to a combination of state policies that mandate longer sentences by default, a truth-in-sentencing law requiring inmates to serve every day of their minimum sentence, and a parole board with broad discretion to deny inmates release.⁹⁶

The final major influence on population size is the rate at which prisoners are released. Only about 5,000 prisoners are serving parolable life sentences or life without parole, meaning that a significant majority of Michigan's 38,650 prisoners will return to their communities after an average of about four years behind bars.⁹⁷ Fewer than 10 percent of returning prisoners serve the full maximum prison sentence for their crime, meaning that the Michigan Parole Board's decisions have a significant impact on the overall population size.⁹⁸

* The number of new court commitments is driven by crime rates, policing strategies, the number of felony crimes contained in or added to Michigan law, mandatory prison sentences, the availability of nonprison alternative sanctions and offenders' eligibility for them. Parolees who are returned to prison for violating a term of their parole serve an average of 13.9 months before being released again. This behavior, known as a "technical violation," includes noncriminal activity that violated a condition of the parolee's release, conduct that could have been prosecuted as a crime but was not, or conduct that resulted in the parolee being convicted of a misdemeanor. Barbara R. Levine, "10,000 Fewer Michigan Prisoners: Strategies to Reach the Goal" (Citizens Alliance on Prisons and Public Spending, 2015), <https://perma.cc/PNG2-XTUP>.

All male prisoners enter MDOC custody by way of the Egeler Reception Center in Jackson, where they are held for about a month while MDOC completes a number of administrative tasks, such as taking fingerprints, evaluating the prisoner's health and education levels, and assigning him a security classification. Female prisoners are processed at Huron Valley Correctional Facility, the prison which houses women.⁹⁹ The classification levels range from one to five, with five reserved for offenders who have been deemed the most serious risks.¹⁰⁰

There are other corrections facilities with specialized functions like the Egeler Reception Center and Huron Valley Correctional Facility. The Special Alternative Incarceration Facility provides work experience, boot-camp style exercise, substance abuse treatment and educational services aimed at helping rehabilitate low-level offenders.¹⁰¹ The Detroit Detention Center is run jointly by MDOC and the Detroit Police Department and detains adult men for up to 72 hours while they await arraignment in one of the two area district courts.¹⁰² The Detroit Reentry Center is run as a prison, but houses only parolees who either have yet to complete required programming, or who have committed parole violations but have not had their parole revoked.¹⁰³

The rest of the correctional facilities are prisons for adult male offenders. Most prisons house inmates that have different security classifications, but they segregate prisoners by security level into separate housing units and recreation areas. Each prison offers a blend of services to meet the needs of its specific population, such as mental health and substance abuse treatment, education courses, libraries, religious services, workplace training or in-prison employment opportunities. The oldest facility is the Michigan Reformatory, which was built in the late 1870s.¹⁰⁴ Bellamy Creek Correctional Facility, built in 2001, is the newest.¹⁰⁵

Prisoners exit the system when the Michigan Parole Board grants them parole, when they have served their maximum sentence or when they are released to a mental health hospital or into the custody of a court. There are currently about 38,650 prisoners in MDOC custody, down from an all-time high of 51,000 in 2006. The current prison net operating capacity is just over 40,000.¹⁰⁶

In-Prison Programming

MDOC offers in-prison education programs that provide academic, technical, workplace readiness and substance abuse training. Its goal is for prisoners "to become contributing, productive members of the prison community while incarcerated and contributing members of their communities upon release from prison."¹⁰⁷ The department offers vocational education and job placement services, GED certification, English language courses and vocational education, among others.

MDOC begins preparing prisoners for re-entry into society as soon as they arrive in prison, using the Offender Success Model. The model calls for each prisoner to be evaluated using an actuarial risk assessment tool that helps the department determine whether he is at risk for future criminal behavior and what he needs in order to reduce his odds of reoffending. MDOC uses the findings of this evaluation, information from presentencing reports, criminal histories, education level and any mental health or substance abuse needs to create an individualized case plan for each prisoner. The case plan determines what programming the department will provide prisoners. MDOC then ensures that each prisoner is enabled to complete the programming called for in his case plan prior to his earliest release date.¹⁰⁸

The Michigan Parole Board considers a prisoner's compliance with this case plan as a factor in parole readiness. The model also specifies what factors should be taken into consideration when developing the terms and conditions of parole, such as criminal history, the availability of community programs and special stipulations for certain kinds of offenders. Finally, it calls for parolees to contribute to parole and post-parole plans that outline how they plan to become and remain self-sufficient.¹⁰⁹

Third parties also offer educational programming within Michigan prisons. Chance for Life is a nonprofit that offers voluntary job readiness, life skills and behavior-modification training at some facilities, for example. Ohio University, Delta College, Montcalm Community College, Kalamazoo Community College and Calvin College, among others, provide correspondence courses and in-prison classes. Habitat for Humanity,

Goodwill Industries and the Michigan Department of Natural Resources provide opportunities for prisoners to gain work experience building cabinets or growing landscaping plants.¹¹⁰

Parole Board and Process

Parole is the term for the conditional, supervised release of a prisoner prior to him serving the length of his maximum sentence. Prisoners who are paroled are released into the community under the supervision of a parole officer. They must comply with a set of rules in order to remain on parole and not be sent back to prison.

The Michigan Parole Board is the only body with authority to parole a felon in the custody of the Michigan Department of Corrections. The 10-member board gains jurisdiction over a case when the prisoner has served his entire minimum sentence.¹¹¹ The current Michigan Parole Board was created by an executive order by Gov. Rick Snyder in 2011. Its members are appointed by the director of MDOC. The MDOC director is the head of the department and reports directly to the governor.¹¹²

As a prisoner nears his earliest release date, or the end of his minimum sentence, his case will come to the attention of the parole board. MDOC prepares a Parole Eligibility Report approximately eight months prior to an inmate's earliest release date and schedules the prisoner's case for review by the board. Most prisoners interview with a member of the board about the prisoner's criminal history, any substance abuse, conduct in prison, participation in classes or programs and any previous experience with probation or parole.¹¹³

The decision to grant release on parole depends on the outcome of a vote of a three-member panel of parole board members who take into consideration the Parole Eligibility Report, the interview, and the prisoner's "mental and social attitude."^{*} They may also consider letters of support from the prisoner's friends and relatives, as well as information provided

to them by the victims of the prisoner's crime.¹¹⁴ The board members use parole guidelines that contain a numerical scoring system which applies objective criteria to help increase efficiency and reduce disparity in parole decisions.¹¹⁵ State law requires board members not to grant parole unless and until they reach a "reasonable assurance" that the prisoner will not become a "menace to society or risk to the public safety."¹¹⁶ However, prisoners who score a "high probability of parole" using calculations set out in the guidelines are required to be paroled unless the board has a "substantial and compelling" reason to deny parole.¹¹⁷

If the parole board decides to grant parole, they set a release date and specify the amount of time that the prisoner will spend under the supervision of a parole officer in the community. MDOC continues to monitor the prisoner's behavior between the date of the parole board's decision and the prisoner's release, and the parole board may suspend parole for an individual who engages in misconduct or if new adverse information about him comes to light. Parolees who engage in misconduct after their release are subject to having their parole revoked at the discretion of the board. Prosecutors may appeal parole decisions, and parolees may appeal parole revocations.¹¹⁸

* For prisoners serving a life sentence who are eligible for parole, a vote by the full 10-member board is required. MCL § 791.246; MCL § 791.206(2); MCL § 791.233.

CHAPTER V

**THE PROCESS OF
ADMINISTERING
CRIMINAL JUSTICE**

The administration of criminal justice in Michigan is triggered when a crime is committed and law enforcement identifies a suspect. Because of limited resources and practical considerations, many people who commit or attempt to commit crimes are never brought to justice. Sometimes a criminal completes the crime without being detected and leaves law enforcement with no means to identify or apprehend him. In other instances, people who have been victimized choose not to report the crime, and law enforcement agents are never alerted to the fact that criminal activity occurred.* However, alleged criminals are apprehended every day. The following section describes what typically ensues following the commission of a crime.

Criminal Charges and Arrests

When a crime is detected or reported, local law enforcement must investigate by collecting and verifying evidence, identifying suspects, establishing motives and reporting the results of the investigation to the prosecuting authority. If the criminal was not caught in the act, this information provides a basis for the prosecutor's decision whether or not to charge a suspect with a crime and initiate legal proceedings against him.

An individual's first interaction with the criminal justice system is often an arrest — that is, when a person is taken into the government's custody and detained.¹¹⁹ When police officers make an arrest, they do so in one of two ways: either they apprehend the arrestee during or immediately after an incident and make a warrantless arrest, or they obtain and execute an arrest warrant.[†]

The Fourth Amendment to the U.S. Constitution protects citizens from unreasonable government searches and seizures of their person or property.

* This is obviously difficult to calculate, but one Bureau of Justice Statistics study estimates that, nationally, 52 percent of all violent victimizations between the years 2006 and 2010 went unreported. Lynn Langton et al., "Victimizations Not Reported to the Police, 2006-2010" (Bureau of Justice Statistics, 2012), <https://perma.cc/NAV9-R2RR>.

† An arrest warrant is distinct from a bench warrant, which a judge issues in order to compel the appearance of a defendant or witness in court. Although a bench warrant empowers the police to arrest the individual named, it does not initiate criminal action against that individual.

In Michigan, as in the rest of the United States, police officers are not allowed to make arrests at will. An arrest is considered a seizure and triggers a set of Fourth Amendment protections, as well as the presumption of innocence. In order to make an arrest, police officers must have a valid arrest warrant, or probable cause to make a warrantless arrest. In Michigan, probable cause exists "when the facts are sufficient to cause a fair-minded person of average intelligence to believe that the defendant committed the crime alleged."¹²⁰

Arrest Warrants

An arrest warrant is a document issued by a judge or magistrate that compels the accused to appear in court after a prosecutor has filed criminal charges against him using a document called a "complaint."¹²¹ A complaint contains the allegations against the defendant, the crimes he is being charged with and the factual basis for the allegations. If the court accepts the complaint, it issues an arrest warrant that allows the police to arrest the defendant and compel him to appear in court to answer the allegations set forth in the complaint.¹²²

The Michigan Court Rules specify the requirements for a valid warrant. It must show probable cause, be issued by a "neutral and detached magistrate," based on a truthful police affidavit and identify the person to be arrested. If the police seek a warrant on the basis of hearsay information — that is, information that was provided by a third party — they must demonstrate that the information is reasonably reliable.¹²³ A warrant empowers a police officer to make an arrest anywhere in the state, and even to forcibly enter a residence to execute the warrant.¹²⁴

Warrantless Arrests

When a police officer wants to make an arrest without a warrant, the officer must have probable cause for doing so.¹²⁵ Michigan law permits a law enforcement officer to make a warrantless arrest in various circumstances, such as when that officer has cause to believe that a crime has occurred and the individual he is arresting has committed it, or that the arrestee observed

the crime and will be an important witness.* The law also establishes the manner in which a valid arrest is executed:

- The arresting officer must inform the arrestee of his authority to make the arrest and the reason he is making it;¹²⁶
- The arresting officer must inform the arrestee of his rights;¹²⁷
- The arresting officer must not delay in presenting the arrestee to the local magistrate to hear the charges against him. The Supreme Court has ruled that someone arrested without a warrant must generally be arraigned or released within 48 hours.¹²⁸

There is generally no need to obtain a warrant to arrest a criminal suspect in a public place with probable cause. However, police are not allowed to make warrantless arrests of citizens in their homes, except in extreme circumstances.¹²⁹ An example of such an emergency situation might be when a police officer is chasing a criminal suspect and the suspect flees into his home for the purpose of evading capture or destroying evidence.

Processing an Arrest

After an arrest has been executed, police take the arrestee to the police station and put him in a holding cell after completing an administrative process called “booking.” This process involves a pat-down, the confiscation of personal possessions, photographing, fingerprinting and the collection of other identifying information.† The police may also impound and search the arrestee’s vehicle, question him, ask him to provide a handwriting sample and to participate in a line-up.‡ The police must provide him with an opportunity to seek legal counsel.¹³⁰ If an arrestee in police custody retains

* The law also allows private persons to arrest individuals in certain circumstances, such as when they commit a felony in their presence. MCL § 764.15; MCL § 764.15-16.

† Michigan law requires law enforcement personnel to collect and file identifying information for individuals arrested for allegedly committing misdemeanor or felony crimes. MCL § 28.242.

‡ *South Dakota v Opperman*, 428 U.S. 364 (1976). The privilege against self-incrimination applies only to “testimonial communications,” and not things like participating in a line-up or providing a handwriting sample. *U.S. v Hubbel*, 530 U.S. 27 (2000).

an attorney or someone retains one for him, the police must inform him when the attorney is available.¹³¹

Once the booking process is complete, the police either detain the arrestee in lock-up pending arraignment in court or release him with an appearance ticket. An arraignment is a legal proceeding in which the arrestee is formally accused of a crime and the judge decides whether or not to release him on bond or detain him until and throughout his trial.

The law directs the police to bring a person arrested without a warrant to court without delay to answer the charges against him. If an arrestee is not charged and booked within 48 hours, his attorney may obtain a court order, called a writ of habeas corpus, requiring the police to bring him before a judge to determine whether he is being held lawfully.¹³²

If the suspect was arrested without a warrant for violating an ordinance or committing a misdemeanor for which the penalty does not exceed 93 days in jail, a fine, or both, the police can initiate charges by issuing an appearance ticket.¹³³ An appearance ticket is a legal document directing the arrestee to appear in court.¹³⁴ An arrestee served with an appearance ticket may be released pending his arraignment, rather than transported to court by the police. Most jurisdictions in Michigan maintain an “interim bond” process, which allows people who have been arrested without a warrant for a minor offense to deposit a sum of money with the police department in exchange for immediate release. The amount of the bond is set by the department and may range from an amount equal to the maximum possible fine for the offense, to 20 percent of the minimum possible fine for the offense.¹³⁵

If the suspect was arrested for allegedly committing a felony or a misdemeanor punishable by more than 93 days’ imprisonment, the charges cannot be commenced by merely issuing a ticket. Rather, the police must provide the arrestee’s information to the appropriate prosecutor’s office, which determines whether criminal charges should be filed.¹³⁶ If charges are not filed, the arrestee is released. If the prosecutor files criminal charges against the arrestee, then the arrestee becomes a criminal defendant and his case proceeds to arraignment in the appropriate court.¹³⁷

In summary, the typical path from the commission of a felony crime to the beginning of a criminal trial proceeds like this:

- A crime is reported to or witnessed by the police;
- The police investigate the incident and either make a warrantless arrest on the spot or request the issuance of an arrest warrant;
- A prosecutor or city attorney drafts a document called a complaint, formally charging the arrestee with a crime;
- The complaint is filed with the court along with the warrant and the file is opened and assigned a case number;
- The arrestee is brought to court for the arraignment, where he becomes a criminal defendant by being formally advised of the charges against him and his constitutional rights, and may, depending on the crime, be asked to enter a plea;^{*}
- The defendant is either released after posting bond, that is, promising to return for further court proceedings in the case against him, or held in jail until his next court date;[†] and,
- Court dates are set to proceed with pretrial and trial hearings.

Pretrial, Trial and Sentencing Proceedings

Pretrial procedures like arraignment and the bail decision process are the same for both misdemeanor and felony defendants, but later processes differ based on whether the defendant is accused of committing a felony or a misdemeanor.

^{*} Other pleas available to the defendant include, with consent of both the court and the prosecutor, pleas of either guilty but mentally ill or not guilty by reason of insanity. The defendant can also make a conditional plea, which reserves him the right to appeal certain unfavorable rulings and withdraw the plea if those rulings get overturned on appeal. MCR § 6.301(C).

[†] Individuals who are detained pending trial may be allowed to pay a sum of money as collateral to the court in exchange for their release. This is called bail, and the amount of bail they must pay to secure their release is determined on a case-by-case basis by the judge.

Pretrial Detention and Bail

The first arraignment in district court is the hearing at which the judge determines whether the defendant can be released on bond or must be detained in advance of further proceedings. If bond is approved by the judge, the court will set the bail amount.¹³⁸ “Posting a bond” means that the defendant, in exchange for being released back into the community, pledges to the court that he will appear in court when required and comply with any additional orders from the judge, such as refraining from certain activity or travel. “Bail” refers to the sum of money that a defendant may be asked to pay the court to ensure his return, if he can afford it. He will forfeit this money to the court if he does not appear as required and a warrant will be issued for his arrest. If he does follow all the requirements of the bond, he may either get the money back or the court may apply it towards the court costs, fees or fines that the defendant may owe after the trial concludes.¹³⁹

In Michigan, defendants may be offered four different types of bonds:

- A personal recognizance bond allows the defendant to be released in exchange for promising to return to court when required and requires no bail payment.¹⁴⁰
- A cash bond allows a defendant to obtain release from jail if he can pay the full amount of the bail set by the court.¹⁴¹
- A 10-percent bond enables the defendant to be released if he can pay 10 percent of the total bail amount. If he fails to return to court when required, he will forfeit this amount and will have to also pay the remaining 90 percent.¹⁴²
- A surety bond introduces a third party to the process, a bondsman. A bondsman assumes the risk of the defendant's failure to appear in court and promises to pay the bail if the defendant does not return. The bondsman could be a friend or relative who might pay the bail as a favor, or a commercial bondsman, who usually charges the defendant a percentage of the bail amount in return for this service.¹⁴³

Most offenses are “bailable,” meaning that if the defendant can provide enough collateral, or have someone provide it on his behalf, he will be able to obtain his release while awaiting trial or other proceedings. Only people charged with very serious crimes are denied bail. In fact, the Michigan Constitution enumerates nonbailable offenses, which are the crimes of murder and treason.¹⁴⁴ Michigan court rules also state that judges can deny bail to defendants who committed a violent felony while on probation, parole or on pretrial release for another felony, to defendants with two other violent felony convictions within the last 15 years and to defendants are charged with first-degree criminal sexual conduct, armed robbery, kidnapping with intent to extort money or valuables.¹⁴⁵

Judges set different bail amounts for different defendants and crimes. State law requires that the bail amounts be sufficient to ensure compliance with the conditions of the bond, but not be excessive.¹⁴⁶ Judges are to take the defendant’s criminal history, financial resources and the nature of the offense into account when selecting the type of bond and amount of bail.¹⁴⁷

Pretrial procedures for misdemeanors

At a misdemeanor arraignment, conducted in district court, the defendant responds to the charges by pleading guilty, not guilty or no contest, which means that he does not admit guilt but is willing to be sentenced as though he had. If the defendant pleads guilty or no contest, the judge may immediately impose a sentence, or may schedule a sentencing hearing for a later date. Delaying sentencing allows for the probation department to prepare a presentencing report. A presentencing report contains information about the crime and the defendant’s background and recommends a sentence. If the defendant stands mute or pleads not guilty, the case will go to trial and the court will schedule a pretrial conference.

All misdemeanor trials begin with a pretrial conference.¹⁴⁸ The conference is a meeting between a prosecutor and a defendant and his attorney, or just his attorney, to allow for “plea bargaining.” Plea bargaining is a process by which the prosecutor offers to drop a charge, reduce a charge or recommend a certain sentence to the judge in exchange for the defendant’s guilty or no contest plea,

or for information or testimony on another defendant or case. If a plea deal is reached, the resulting “negotiated plea” usually means the case will not proceed to trial. Most criminal convictions are the result of negotiated pleas.*

Pretrial procedures for felonies

The defendant in a felony case does not enter a plea at the district court arraignment. Instead, plea bargaining happens after the arraignment in a pre-exam conference. If no deal is reached, the judge then conducts a preliminary examination, which is a “probable cause hearing” because the judge reviews testimony to ensure that a crime occurred and that there is enough evidence to support a felony charge against the defendant for that crime.† If there is, the judge transfers, or “binds over,” the case to circuit court, where the defendant is arraigned again and then enters a plea before proceeding to trial.¹⁴⁹ If a judge determines there is not enough evidence to demonstrate that the defendant committed the charges against him, then the charges must be dismissed or revised to reflect the court’s finding.

Trial

A criminal trial is a legal proceeding in which a prosecutor, arguing on behalf of the people of Michigan, accuses the defendant of a crime and presents evidence to establish the defendant’s guilt beyond a reasonable doubt.¹⁵⁰ The defendant, represented by himself or his attorney, is not required to prove his innocence or even present any evidence, although he has the opportunity to do both and to present competing evidence of his own.

Although both the prosecution and the defense are entitled to a jury trial, they may opt to allow the judge to assume the jury’s role as a “trier of fact”

* For more information, see: Dylan Walsh, “Why U. S. Criminal Courts Are So Dependent on Plea Bargaining,” *The Atlantic*, May 2, 2017, <https://perma.cc/PL8T-9M8S>. Criminal trials can take weeks or even months, putting pressure on judges and prosecutors to resolve cases quickly using plea bargaining, which may take only a few hours. Plea bargaining affords both parties some control over the result, rather than dealing with the uncertainty of a trial. If no deal is reached, the case proceeds to trial.

† Defendants may waive their right to this hearing.

and decide the case.¹⁵¹ This is called a bench trial. If the parties opt for a jury trial, potential jurors are randomly selected from within the court's geographic jurisdiction using the Secretary of State's list of citizens with state-issued ID and summoned to the court for a process called "voir dire."¹⁵² The prosecutor and defense attorney question the jurors and may request to have certain candidates removed from the pool if there is something objectionable about their background or beliefs as they relate to the case. When the attorneys accept enough candidates to complete a jury — 12 for felonies and six for misdemeanors — the judge administers an oath to the jurors and instructs them on the trial process.¹⁵³

The trial itself proceeds in the following manner:¹⁵⁴

- The prosecution gives an opening statement outlining its case and the evidence against the defendant;
- The defense gives an opening statement outlining its case, which may challenge the accuracy of the prosecutor's evidence;
- The prosecution presents evidence and calls witnesses;
- The defense cross-examines the prosecution's witnesses;
- The "people close their proofs" (the prosecutor indicates that he has presented his entire case);
- The defense presents evidence and calls witnesses, if it chooses to;
- The prosecutor cross-examines the defense witnesses;
- The defense rests;
- The prosecution may present additional witnesses or evidence to rebut those presented by the defense;
- The prosecution rests.
- The prosecution gives a closing statement summarizing the case against the defendant;
- The defense presents a closing statement to the jury summarizing its arguments;
- The prosecution may present a final argument as a rebuttal to the defense's closing statement;
- The judge instructs the jury about the charged crime and the deliberation process;
- The jury deliberates and returns a verdict (which must be unanimous).

Verdicts

If the defendant is found not guilty, he is released. If he is found guilty of a misdemeanor, he may be immediately sentenced. Sentences for felonies are usually determined at a separate sentencing hearing. After the conviction has been finalized, the defendant has the right to appeal the verdict or the sentence to a higher court, as described in Chapter III.* If he does not file an appeal on time, he forfeits this right and must petition the court for permission to hear a belated appeal.¹⁵⁵

Sentencing

After the trial has concluded with a finding of the defendant's guilt or a guilty or no contest plea has been negotiated, the judge will have the parties reconvene for a sentencing hearing, where the judge delivers the sentence. If the judge is merely approving a mutually agreed-upon sentence determined during plea bargaining, the hearing may only take a few minutes.† For more serious matters involving long periods of incarceration, however, the judge may hear arguments regarding the sentencing from the prosecutor, defense attorney, victims of the crime or the convict himself.‡

At the conclusion of the hearing, the judge will impose the sentence, which may consist of fines, probation, time in jail or prison, or some combination thereof.¹⁵⁶ Judges are also required to order the defendant to pay restitution to victims who have suffered financial damage as the result of his crime.¹⁵⁷ Michigan trial courts are empowered to require criminal defendants to pay

* This does not apply if the defendant pleads guilty, in which case he is generally not entitled to an appeal and must request permission to appeal if he wishes to have the conviction reviewed.

† The judge can reject the agreement, accept it with or without considering the presentencing report, or take it under advisement. The court is not bound to honor the plea agreement. MCR § 6.302.

Prosecutors obviously have limits on what they can charge because it has to be consistent with their duty to defend the public. But they could dismiss charges in exchange for testimony in another case. In this regard, they have a significant amount of discretion.

‡ Probation officers are required by law to conduct presentencing investigations for all felony convictions, which help judges make sentencing determinations. These reports include the probation agent's evaluation of the offender, the circumstances of the offense, the offender's personal and criminal history and the agent's sentencing recommendation. "Pre-Sentence Investigation Reports" (Michigan Department of Corrections, 2018), <https://perma.cc/359N-C7KJ>.

“costs,” which are a portion of the court’s operating expenses. These are only assessed when a conviction is secured and only assigned to convicts. The sum is usually an amount equal to the court’s total cost for handling felony cases divided by the number of felony defendants in a year.*

Incarceration

If an offender’s sentence includes prison time, the sheriff’s office in his county is usually responsible for transporting him to the MDOC intake facility, where he will be processed, assigned a security classification and transferred to a prison.¹⁵⁸ He will serve at least his minimum sentence and complete programming according to the Offender Success Model described in Chapter IV, and then be paroled or released at the end of his maximum sentence. Michigan prisoners lose a number of rights while incarcerated, such as the right to vote. Some rights, including the right to vote, are restored upon release. Others, such as the right to bear arms, are not reinstated automatically, but may be restored with a successful petition.¹⁵⁹

Release from Prison

Prisoners leaving prison do so in one of two ways: Either they serve their entire maximum sentence and are discharged from MDOC custody with no further supervision, or they are paroled. This means they are given a conditional release from prison before serving their maximum sentence, and they will remain under MDOC supervision.

Approximately three months before a prisoner is scheduled to be discharged, MDOC begins updating his records and preparing him for release. They check to see whether the prisoner is subject to any other warrants, immigration detainers or personal protection orders, and they update the relevant parties with that prisoner’s date of discharge. They also take his DNA sample, test him for communicable diseases, and, if necessary, make arrangements for follow-up care if he is mentally ill or disabled and unable to care for himself.¹⁶⁰

* MCL § 769.1f. MCL § 769.1k(1)(b)(iii) states that court costs must be reasonably related to the cost of a felony case, but the specific costs of individual cases need not be separately calculated.

Prisoners are released seven days a week, including holidays. MDOC returns any funds that the prisoner may have had in his commissary account and any personal items that he had on his person when he entered prison. It also provides a photo identification card with his legal name and date of birth. The department may provide him with one set of shoes and clothing, and up to \$75 if the prisoner has no job or other means of support awaiting him upon his release. Prisoners without transportation may be provided with transportation to the place where they will live or work, or where they were convicted, at MDOC expense.¹⁶¹

The majority of prisoners leaving MDOC custody are those who have been paroled. They may remain under the supervision of the parole officer until the end of their maximum prison sentence, although they may be discharged from supervision entirely if their reentry goes well.¹⁶² To discourage wrongdoing among parolees, the state has implemented policies that aim to encourage accountability and good behavior among parolees. Michigan’s Parole Sanction Certainty Program, signed into law in 2017, requires MDOC to implement special programming in five counties designed for parolees who are at a high risk of reoffending, or “recidivating.” Recidivism is a key performance measure for the criminal justice system, whose goal is to reform offenders into law-abiding citizens. Michigan’s recidivism rate has hovered near 30 percent for the past several years, down from an all-time high of over 45 percent in 1998.¹⁶³

A limited number of people with criminal records eventually become eligible to have their record cleared. Current law allows people with one felony and one or two misdemeanors to have their felony expunged, or cleared from their record, and people with one or two misdemeanors to have those crimes cleared if they have no other criminal history.¹⁶⁴ Expungement is not available to people convicted of serious crimes, such as human trafficking, criminal sexual conduct and DUI.¹⁶⁵ People who are eligible for expungement must petition the court in order to get their record cleared.

CONCLUSION

Michigan's criminal justice system is multilayered and broad. Practitioners and experts will recognize that the fine details of its operations are even more complex than the major outlines presented in this primer. However, the information contained here provides a thorough overview of the system as a whole and a good starting point from which to analyze proposed reforms.

A functioning criminal justice system is a fundamental feature of a healthy society. But it is critical not only that it perform well on behalf of society as a whole, but also on behalf of the individual offenders. The degree of government intervention in the lives of offenders is greater than that authorized for any other governmental purpose. It disrupts families, sending ripples through entire communities. The expense to taxpayers is massive. For all these reasons, it is well worth any and all efforts to ensure that we understand the system well enough to know when it is failing to perform up to the standards we expect.

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This report describes the basics of how Michigan’s criminal justice system works: explaining some essential features of criminal law, the various layers of law enforcement, adjudication processes, prison policy and more. Unlike most policy papers, however, this report is meant to be strictly descriptive. That is, it does not attempt to judge the effectiveness of Michigan’s current criminal justice system or provide policy recommendations. It is hoped that the information contained here will contribute to more informed debate about how to best improve Michigan’s criminal justice system.



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