

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



DANA NESSEL
ATTORNEY GENERAL

October 10, 2024

Dear Law Enforcement Officials,

This year, Michigan's statewide general election will be held on Tuesday, November 5, 2024 (hereinafter, "Election Day"). As Election Day quickly approaches, we wanted to take this opportunity to thank you for your commitment to helping safeguard our elections process and for helping to ensure that every eligible voter has the opportunity to exercise their right to vote in a safe manner. Regardless of where voters cast their ballots, we are all committed to ensuring:

- that every eligible voter has the ability to cast their vote and have it be counted,
- that those who choose to appear in person to cast their ballots can do so free from intimidation and harassment,
- that observers at polling places, or other areas where voting or tabulating are taking place, do so in accordance with the law; and
- that all participants and observants abide by the laws of this state during the election process.

We anticipate that in the run up to the election - and on Election Day - there may be questions about our election laws. Accordingly, we have prepared legal guidance to try to help with some of the more common issues that you may encounter. In addition, the Department of Attorney General will have a phone line staffed by prosecutors on Election Day, exclusively for use by law enforcement agencies. Should you have a question or concern, please feel free to call our office at [REDACTED]. We will make sure that an attorney is available to assist you.

It is important to note that, under MCL 168.940 and 168.941, county prosecutors and law enforcement agencies have a duty to investigate alleged criminal violations of the Michigan Election Law, and in appropriate cases, pursue appropriate enforcement action. These statutes read as follows:

“It is hereby made the duty of every prosecuting attorney, whenever he shall receive credible information than any such offense has been committed, to cause the same to be prosecuted.” (MCL 168.940)

“It is hereby made the duty of any police, sheriff or peace officer, present and having knowledge of any violation of any of the provisions of this act, to forthwith institute criminal proceedings for the punishment of such offender.” (MCL 168.941)

You should also be aware that, pursuant to MCL 168.678, each board of election inspectors and each inspector “shall possess full authority to maintain peace, regularity and order at its polling place, and to enforce obedience to their lawful commands during any election.” Election inspectors are trained and instructed to contact law enforcement, as appropriate, to ensure there is no disruption in voting. If law enforcement is called, you can assume that it is because the election inspector has run out of other options to maintain order and law enforcement intervention is necessary.

The Michigan State Police is also prepared to enforce the laws regarding voting in this State. If you have concerns about election laws being violated in your jurisdiction, please feel free to reach out to them at the local post.

STATUTORY CHANGES

Important statutory changes have occurred as the result of the adoption of a constitutional amendment in November 2022. Most significant, the law and constitution now require that city and township clerks offer at least 9 days of early voting in connection with a statewide election. Early voting allows a voter to cast a ballot before Election Day, in an experience similar to voting on Election Day. During the early voting period, voters are issued a ballot and can then insert their ballot directly into a tabulator at their early voting site. Each local clerk is responsible for identifying the dates, times, and locations at which early voting for their jurisdiction will take place. All the same laws that apply to an in-person polling place on Election Day apply at an early voting site, including applicable criminal laws.¹

AV BALLOT DROP BOXES – VANDALISM (NEW)

MCL 168.761d(8) provides that clerks must now immediately report to local law enforcement any vandalism involving absent voter ballot drop boxes or any suspicious activity occurring in the immediate vicinity of the drop box. Vandalism involving a drop box would fall under MCL 750.377a. According to the Michigan Department of State’s Bureau of Elections, the total value of most drop boxes will fall between \$1,000.00 and \$20,000.00, but there is at least one model that costs only \$995.00. In order to determine the appropriate violation under MCL 750.377a, you should discuss the value of any damage with the local clerk that reports vandalism of a drop box.

¹ See Const 1963, art 2 § 4(1)(m).

AV BALLOT DROP BOXES – VOTER INTIMIDATION

MCL 168.761d provides that every jurisdiction must have one or more absent voter ballot drop boxes (depending upon population) in which voters may deposit absent voter ballot applications and completed absent voter ballots. In prior elections, persons or groups have gathered at drop boxes to monitor activity. Depending upon the circumstances, such activity could deter an elector from giving his or her vote by depositing their completed absent voter ballot in the drop box, which is a felony under MCL 168.932(1)(a).

AV BALLOT DROP BOXES – ELECTION OFFICIAL INTIMIDATION (NEW)

MCL 168.761d requires that starting 35 days before an election, an authorized election official must collect on a daily basis the contents of an absent voter drop box and take the contents to the clerk's office. In prior elections, persons or groups have gathered at drop boxes to monitor activity. Depending upon the circumstances, such activity could intimidate an election official and interfere in the performance of the official's election-related duties, which is a misdemeanor (or felony, third offense) under MCL 168.931b. Intimidation does not include constitutionally protected activity or conduct that serves a legitimate purpose.

BODY WORN CAMERAS

Many law enforcement agencies are equipped with body worn cameras (BWC). Every agency that employs the use of these devices has adopted policies for when the camera should be turned off and when it should be recording. It is illegal for cameras to be used in certain areas of an early voting site or polling location to ensure the privacy of the voters. However, law enforcement should abide by the policies their offices have adopted with regard to BWC, and care should be taken not to intentionally record a voter who is casting his or her ballot.

FIREARMS, DEMONSTRATORS & VOTER INTIMIDATION

Because there are certain public places that are often used as early voting sites or polling locations where carrying concealed or openly carrying a firearm is not allowed, law enforcement should be familiar with those locations.

MCL 28.425o prohibits the carrying of concealed weapons in the following premises: a school or school property; a public or private child care center or day care center, a public or private child caring institution, or a public or private child placing agency; a sports arena or stadium; any property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship; an entertainment facility with a seating capacity of 2,500 or more individuals; a hospital; or a dormitory or classroom of a community college, college, or university. It should be noted that the CPL holder can receive express permission from the school or church to carry concealed.

The open carry of firearms is also prohibited in certain places that may be used for election purposes, including school buildings and places of worship.² The exception to this rule is (1) if the person has express permission from school officials or the owner of the place of worship to possess a firearm on the premises,³ or (2) the person possesses a valid, concealed pistol license,⁴ and no other building policy prohibits firearms possession by a concealed pistol license holder.⁵ If neither exception applies, a person cannot openly possess a firearm in these places.

If a person openly carries a firearm inside or outside an early voting site or polling location, there are still potential crimes that could be committed. In deciding if a person can be arrested for a firearms offense you should consider the following:

Have you received notification that voters are scared to enter the early voting site or polling location because of the presence of armed individual(s)?

Have you received notification from the precinct inspector or other election official that they are concerned with the presence of armed individual(s)?

Have you tried to educate the offender by explaining that his or her behavior is intimidating some voters into forgoing their right to vote because they are scared, and that is a crime under Michigan law?

Is the offender from the area? What does the offender say his or her purpose is for standing outside the early voting site or polls with a firearm?

A Scenario Law Enforcement May Be Likely to Encounter

Law enforcement is called to an early voting site or polling location by either a voter attempting to enter the site or polling place or by a precinct inspector or other election official who reports that a group of armed individuals—who may even be demonstrators—are outside the early voting site or polling location and are causing voters to leave without casting a ballot for fear of walking near the demonstrators.

MCL 168.932(a), makes it a 90-day misdemeanor for a person to attempt to influence an elector: “[a] person shall not attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.”

² MCL 750.237a, MCL 750.234d. Other prohibited places include a bank, “court,” theater, sports arena, day care, hospital, or bar. MCL 750.234d.

³ MCL 750.234d(2)(d), MCL 750.237a(5)(e).

⁴ MCL 750.234d(2)(c), MCL 750.237a(5)(c).

⁵ See *Michigan Gun Owners, Inc v Ann Arbor Public Schools*, 502 Mich 695 (2018).

To determine if an individual is attempting to influence a voter you should consider if the person is voting himself or if they are standing for an extended period of time at or near an early voting site or polling place openly carrying a firearm. Officers should utilize their discretion to determine if such circumstances exist that might implicate MCL 168.932(a) and, only utilize his or her arrest power as a last resort.

If the individual claims that their behavior is a lawful expression of their First Amendment right to free speech, there has to be a legal message that the person is trying to convey by openly carrying a firearm as he stands at or near an early voting site or polling place to be protected speech. It is difficult to imagine a scenario where a legal message is present in such an activity when voters are intimidated by the behavior.

If the individual is claiming a Second Amendment Right to bear arms outside of their home, such that it allows them to openly carry firearms outside an early voting site or polling location, and at the expense of the voters' rights under the 15th, 19th, 24th and 25th Amendments, the right to vote may outweigh the interest expressed by the protester.

The decision to arrest should only be made after a careful analysis of the facts known to the officer. Every attempt at education and deterrence should be utilized first, with arrest as the last available option. Our office is available for consultation should you encounter this type of situation.

It is worth noting that under federal law, 18 USC § 592, it is illegal to order, keep, or have under one's control any troops or armed men at any polling place in a general or special election, if one is a civil or military officer or employee of the United States government.

Groups of Armed Demonstrators Outside 100-Foot Zone

Special consideration should be given to groups of armed demonstrators who are outside the 100-foot safety barrier. When deciding if the group is acting in an intimidating fashion, you should consider the following:

The number of people grouped together

The amount of coordination between members of the group – are they wearing clothing that identifies them? Are they positioning themselves with any coordinated effort?

How are they dressed? Are they in “full kit?”

Are they yelling, screaming or being loud?

How are they holding their weapons?

How close to the 100-foot zone are they positioned?

What is the size, caliber, appearance of the weapon?

PROTESTS WITHOUT WEAPONS

Michigan law prohibits a person from posting, displaying, or distributing inside an early voting site or polling place or any hallway used by voters to enter or exit an early voting site or polling place, or within 100 feet of an entrance to a building in which an early voting site or polling place is located, “any material that directly or indirectly makes reference to an election, a candidate, or a ballot question.” MCL 168.744. Note, while this restriction applies to candidates and ballot proposals appearing on the ballot at this election, it does not apply to official election materials that are required by law to be posted, displayed, or distributed in an early voting site or polling place on Election Day. It should be noted that the Department has seen an uptick in the number of aggressive and illegal electioneering within the 100 foot zone. Voters have reported feeling intimidated by this behavior.

To determine if a person or groups of people are violating the law as it relates to the 100 feet rule it may be helpful to think about the following:

The following activities are prohibited:

- Displaying “pro and con” information or “vote for/against” materials regarding the candidates or proposals that appear on the ballot. This does not include school gear that does not say “vote for/against.”
- Approaching voters to verbally encourage them to vote for or against any person or question on the ballot.
- Distributing any type of campaign literature or write-in stickers.
- Displaying campaign signs, posters, or bumper stickers.
- Collecting petition signatures.
- Requesting donations, selling tickets, or engaging in similar activities.
- Vehicles with campaign signs or bumper stickers must be parked at least 100 feet from any entrance to the building in which the early voting site or polling place is located.

A Scenario Law Enforcement May Be Likely to Encounter

A group of people are standing outside of an early voting site or polling location,

loudly yelling at voters as they approach the site or polling location dressed in clothing that supports a candidate for office. They must be at least 100 feet from the entrance of the early voting site or polling location. If they are not at least 100 feet from the site or polling location, they are committing a crime. You should consider their behavior in light of the following criminal statutes⁶:

MCL 168.744(1) makes it a misdemeanor for any person “in a polling room, in a compartment connected to a polling room, or within 100 feet from any entrance to a building in which a polling place is located shall [to] persuade or endeavor to persuade a person to vote for or against any particular candidate or party ticket or for or against any ballot question that is being voted on at the election. A person shall not place or distribute stickers, other than stickers provided by the election officials pursuant to law” in the same areas.

MCL 168.744(3) makes it a misdemeanor for a person, on election day, to “post, display, or distribute in a polling place, in any hallway used by voters to enter or exit a polling place, or within 100 feet of an entrance to a building in which a polling place is located any material that directly or indirectly makes reference to an election, a candidate, or a ballot question.”

MCL 168.931(1)(k) makes it a misdemeanor for a person to solicit votes in a polling place or within 100 feet of polling place on election day.

MCL 168.932(a) makes it a felony for a person to attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.

A Scenario Law Enforcement May Be Likely to Encounter

A group of protesters are standing outside of a polling location protesting recent political events. These protestors are 100 feet from the polling location. However, the protesters are causing voters to leave the polling location without voting for fear of walking near them and interfering with foot traffic into the polling location. The protesters speech is protected under the First Amendment. That said, reasonable restrictions on the exercise of free speech are permitted if the limitation is confined to a time, place, and manner restriction that is rationally related to public welfare and content neutral.

⁶ Not all criminal statutes have been amended to expressly include references to early voting sites.

If the protesters are interfering with voters' access to their polling location, law enforcement should warn the protesters that continued interference could result in arrest.

Our office is available for consultation should you encounter this situation. Public safety and ensuring ballot access are the main focus. However, every attempt at de-escalation and deterrence should be utilized first, with arrest as the last available option. You should consider separate locations for protestors and those seeking to vote.

VOTER INTIMIDATION WITHOUT WEAPONS

Voter intimidation can occur even without the presence or use of a weapon. Some other ways it is illegal to intimidate or coerce a voter are the following:

MCL 168.932(1)(a) makes it a felony for a person to “attempt, by means of bribery, menace, or other corrupt means or device, either directly or indirectly, to influence an elector in giving his or her vote, or to deter the elector from, or interrupt the elector in giving his or her vote at any election held in this state.”

Every situation must be evaluated in terms of the impact the behavior is having on the voter. All the facts and circumstances are relevant to a determination of the defendant's intent.

ELECTION OFFICIAL INTIMIDATION (NEW)

MCL 168.931b makes it a misdemeanor (or a felony, third offense) for an individual to intimidate an election official because of the election official's status as an election official, with the specific intent of interfering with the performance of that election official's election-related duties. It is also a misdemeanor (or felony, third offense) for an individual to prevent an election official from performing the election official's duties in conducting an election. Intimidation does not include constitutionally protected activity or conduct that serves a legitimate purpose.

POLL WATCHERS AND CHALLENGERS; DISRUPTIONS AT EARLY VOTING SITES AND POLLING PLACES

Elections are an open and transparent process that may be observed by any interested person. Election challengers are appointed by political parties and qualified interest groups to observe the election process and may challenge a voter's eligibility to vote, depending on the circumstances. A person who wishes to observe but is not a qualified election challenger is commonly called a poll watcher. Election challengers and poll watchers play an important role in verifying that the election is conducted openly and fairly. They are allowed into early voting sites and polling locations to ensure that election processes are conducted in accordance with the law and fairly. However, the right to be present or to challenge voters is not absolute.

They have the right to be present and to view the voting process. They do not have the right to act disorderly. If the site or poll supervisor has asked the challenger or the watcher to leave and they refuse to do so, the supervisor is instructed to call law enforcement. You should know that if a clerk or an election inspector has contacted law enforcement it is only because the person has become extremely disruptive. Clerks and inspectors are instructed to first warn the individual that he or she will be ejected from an early vote site or polling place if problems persist, and then—if problems continue—eject the individual from the early voting site or polling place. They are instructed to contact local law enforcement for assistance if the individual refuses to leave.

Here is some guidance on deciding whether a challenger is acting in an appropriate way.

Challenges must not be based on an “impression” that the voter is ineligible due to his or her manner of dress; inability to read, write, or speak English; the voter’s perceived race, ethnic background, sexual orientation or gender identity, physical or mental disability, support for or opposition to a candidate or political party; or the voter’s need for assistance with the voting process.

A challenger cannot challenge a voter’s right to vote unless the challenger has “good reason to believe” that the voter is not eligible to vote in the precinct.

A voter cannot be challenged simply because he or she does not have or is not in possession of acceptable picture ID, as long as the voter signs the *Affidavit of Voter Not in Possession of Picture ID*. However, a voter who is unable to show picture identification can be challenged if a challenger has good reason to believe that the person is not qualified to vote in the precinct, independent of the voter’s inability to provide acceptable picture ID.¹

A Scenario Law Enforcement May Be Likely to Encounter

A poll challenger sees a person of Hispanic ethnicity and “challenges” his or her right to vote as a qualified elector. The challenger is unable to articulate “good cause” for this belief because all they point to as evidence of their status is the ethnicity of the voter. This is not a “good reason to believe” the voter is not legally registered. Again, challenges must not be based on an “impression” that the voter may be ineligible due to his or her perceived race or ethnic background, inability to speak, write, or read English, or manner of dress. When the precinct chairperson attempts to remove the challenger, but the challenger refuses to leave the premises, law enforcement may be called.

¹ Additional guidance can be found in The Appointment, Rights, and Duties of Election Challengers and Poll Watchers, available at https://www.michigan.gov/sos/-/media/Project/Websites/sos/01vanderroest/SOS_ED_2_CHALLENGERS.pdf?rev=76b1d619cf8d4aec94b51a344ad62fca&hash=0AFE6B9C7EB320CCD33D111579357243.

Law enforcement has the right to arrest the challenger for a violation of:

MCL 750.170 makes it a misdemeanor for “[a]ny person who shall make or excite any disturbance . . . at any election . . . where citizens are peaceably and lawfully assembled.”

MCL 168.727(2) makes it a misdemeanor for a person to “challenge[] a qualified and registered elector of a voting precinct for the purpose of annoying or delaying voters[.]”

On the opposite side, if a voter is challenged for good cause that they are not a qualified voter and they are attempting to vote illegally, they can be arrested by law enforcement for the following:

MCL 168.499(1) makes it a misdemeanor for a person “in answer to a question or in the registration application, [to] make[] a material statement that is false[.]”

MCL 168.519 makes it a misdemeanor for “[a]n individual [to] register as an elector if he or she knows or has good reason to believe that he or she is not a resident and qualified.”

MCL 168.932c makes it a felony for a person to “provide compensation” to another person for registering people to vote if the compensation is based on the total number of voters the person registers, or the total number of persons registered to vote in a particular political party.

Disorderly Conduct

When deciding if a poll watcher or challenger is acting disorderly it might be helpful to consider that a challenger can be expelled from an early voting site, polling location, or absent voter ballot counting board for any of the following reasons:

for unnecessarily obstructing or delaying the work of the election inspectors or other officials; or

for touching ballots, election materials or voting equipment; or

for campaigning; or

for acting in a disorderly manner.

A challenger is prohibited from threatening or intimidating voters entering an early voting site or polling place, applying to vote, entering a voting station, voting, or leaving an early voting site or polling place. **Challengers are not authorized to approach voters or talk directly to voters for any reason. Challengers and poll watchers are prohibited from taking photos or recording in an early voting site or polling place during the hours the polls are open for voting.**

(Note, however, that challengers and poll watchers may use other applications on mobile devices if not disruptive or intrusive.)

Other Disruptions Involving the Use of Cell Phones at an Early Voting Site or Polling Place

Persons shall not use video cameras, cell phone cameras or video recording, cameras, television or recording equipment at an early voting site or polling place, except that broadcast stations and credentialed media may be permitted to briefly film from public area. Personnel working for broadcast stations or media shall not set up cameras in an early voting site or polling place.

Persons shall not use cell phones once they have entered voting station. Cellphones may be used at an early voting site or polling place by voters (while waiting in line), challengers and poll watchers as long as they are not disruptive to the voting process.

ABSENT VOTER APPLICATIONS AND BALLOTS; VOTING TWICE

There are many laws around absentee voting, voting twice and ballots. Here is an overview of some of the crimes related to these issues:

Absent Voter Ballot Applications:

Voter Qualifications

MCL 168.945 makes it a misdemeanor for person who induces or attempts to induce another to apply to vote as an absent voter knowing the person is not qualified to do so is.

Absent Voter Ballots

MCL 168.932(f) makes it a felony for an unauthorized person who returns, solicits to return, or agrees to return an absentee ballot.

MCL 168.761(4) makes it a felony for a person who assists an absent voter in completing a ballot to make a false statement.

MCL 168.761(5) makes it a misdemeanor for an absent voter to knowingly make a false statement on an absent voter ballot return envelope.

MCL 168.769(4) makes it a felony for a person to vote at an election both in person and by means of an absent voter ballot or who attempts to vote both in person and by means of an absent voter ballot.

MCL 168.765a(19) makes it a misdemeanor for any person to photograph or videorecord an absentee ballot or any other election records, other than posted election results, in an absent voter counting place.

Voting Twice

MCL 168.932(a)(e) makes it a 4-year felony to for a person to offer to vote or attempt to vote more than once as at the same election.

A Scenario Law Enforcement May Be Likely to Encounter

A voter appears at a polling place to vote. Notwithstanding the fact that the voter had already voted and returned an absentee ballot, the voter made an application for an in-person ballot. MCL 168.932a(e) is a statutory provision providing that a person shall not offer to vote or attempt to vote more than once at the same election either in the same or in another voting precinct. These are not specific intent crimes, and do not require a showing that the person specifically intended to vote twice. In addition, the poll worker will see a warning on the electronic poll book that warns them to not let the voter have a second ballot. A ballot can only be legally spoiled in the clerk's office by two Fridays before the election. In this election, that day would be **October 25, 2024.**

DISTRIBUTION OF MATERIALLY DECEPTIVE MEDIA (NEW)

MCL 168.932f(1) makes it a misdemeanor (first offense) for a person to distribute, or enter into an agreement with another person to distribute, materially deceptive media (deepfakes), when all of the following apply: (1) the person knows the media falsely represents the depicted individual; (2) the distribution occurs within 90 days before an election; (3) the person intends the distribution to harm the reputation or electoral prospects of a candidate and the distribution is reasonably likely to cause that result. The prohibition does not apply if the media includes a disclaimer.

OTHER CRIMES TO CONSIDER

Should a voter, challenger, poll watcher, or other person appear at an early voting site or polling location drunk, crowd people unnecessarily, or cause a disturbance that interferes with a person's constitutional right to vote, you should consider the following crimes:

MCL 750.167 (disorderly conduct – public intoxication, loitering, crowding people unnecessarily) (1) A person is a disorderly person if the person is any of the following: (e) A person who is intoxicated in a public place and who is either endangering directly the safety of another person or of property or is acting in a manner that causes a public disturbance. (d) A person who is found jostling or roughly crowding people unnecessarily in a public place.

MCL 750.170 (disturbing the peace) makes it a 90-day misdemeanor to make or excite in a building, located at an election place.

MCL 750.81d makes it an offense to resist or obstruct a lawful order of police officer

MCL 750.234e makes it a misdemeanor to willfully and knowingly brandish a firearm in public. To brandish means to wave or flourish something as a threat or in anger or excitement.

MCL 750.82 makes it a felony to assault someone with a dangerous weapon with the intent to injure or to place the victim in reasonable apprehension of an immediate battery. This does NOT require an offender to point a weapon at the victim.

MCL 750.81a makes it a misdemeanor to cause an aggravated injury to a person while assaulting them.

MCL 750.81 makes it a misdemeanor to assault or assault and batter someone.

Law enforcement officers are provided great discretion in their interactions with citizens of their jurisdictions. In some cases, a brief conversation will be enough to ensure compliance with the laws of this State. In other cases, removing someone from the property will suffice. It is our hope that no one will behave in such a manner that warrants an arrest. However, if an arrest becomes necessary, please remember the times when a warrant is NOT required for an arrest:

MCL 764.15 provides a peace officer, without a warrant, may arrest a person in any of the following situations:

- (a) A felony, misdemeanor, or ordinance violation is committed in the peace officer's presence.
- (b) The person has committed a felony although not in the peace officer's presence.
- (c) A felony in fact has been committed and the peace officer has reasonable cause to believe the person committed it.
- (d) The peace officer has reasonable cause to believe a misdemeanor punishable by imprisonment for more than 92 days or a felony has been committed and reasonable cause to believe the person committed it.

Please know that the Department of Attorney General stands ready to answer your legal questions as they pertain to Election Day issues. We know that the laws are nuanced, and that education is usually the first line of action in working with the public. We can be reached at [REDACTED]. Together, we will ensure that everyone is free from intimidation and harassment as they cast their ballot on this Election Day.

Thank you for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Robin H. Kadell". The signature is written in a cursive style with a large initial "R".

Division Chief
Criminal Trials Division