

CHARTER TOWNSHIP OF HAMPTON ORDINANCE NO. 34-4

An Ordinance to amend the Charter Township of Hampton Traffic Ordinance, being the Charter Township of Hampton Ordinance No. 34-2 and all subsequent amendments thereto.

THE CHARTER TOWNSHIP OF HAMPTON, BAY COUNTY, MICHIGAN,
ORDAINS:

SECTION 1. SHORT TITLE

This ordinance shall be known as the "second amendment to the Hampton Township Traffic Ordinance 34-2" and "first amendment to Ordinance 34-3".

SECTION 2. AMENDMENTS TO ORDINANCE NOS. 34-2 and 34-3.

The following sections and subsections of the Charter Township of Hampton Traffic Ordinance and amendment thereto, being the Charter Township of Hampton Ordinance Nos. 34-2 and 34-3 respectively, are hereby amended or deleted as set forth in additional sections and subsections are added as indicated. Subsequent section numbers used in this ordinance shall refer to the like numbered sections of the Charter Township of Hampton Traffic Ordinance.

Sec. 5.15 of Chapter 5 of Ordinance No. 34-2 and 5.15 of Section of 2 of Ordinance No. 34-3 are hereby amended to read in full as follows:

Sec. 5.15. Operating while under the influence, operating while impaired, penalties.

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this township if either of the following applies:

(a) The person is under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance.

(b) The person has a blood alcohol content of 0.10% or more by weight of alcohol.

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this township by a person who is under the influence of intoxicating liquor or a controlled substance, or a combination of

intoxicating liquor and a controlled substance, or who has a blood alcohol content of 0.10% or more by weight of alcohol.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles within this township when, due to the consumption of an intoxicating liquor, a controlled substance, or a combination of an intoxicating liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) If a person is convicted of violating subsection (1), the following shall apply:

(a) Except as otherwise provided in subdivision (b) the person is guilty of a misdemeanor, and may be punished by 1 or more of the following:

(i) Service to the community for a period of not more than 45 days.

(ii) Imprisonment for not more than 90 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00 and either of the following:

(i) Performing service to the community for a period of not less than 10 days or more than 90 days and may be imprisoned for not more than 1 year.

(ii) Imprisonment for not less than 48 consecutive hours or more than 1 year, and may be sentenced to service to the community for a period of not more than 90 days.

(c) A term of imprisonment imposed under subdivision (b) (ii) shall not be suspended.

(d) A person sentenced to perform service to the community under this subsection shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(e) As used in this subsection, "prior conviction" means a conviction for a violation of MCLA 257.625(1), (4), or (5), or

former MCLA 257.625(1) or (2), a local ordinance substantially corresponding to MCLA 257.625(1), or former MCLA 257.625 (1) or (2), or a law of another state substantially corresponding to MCLA 257.625(1), (4), or (5), or former MCLA 257.625(1) or (2).

(5) In addition to imposing the sanctions prescribed under subsection (4), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 760.1 to 776.21 of the Michigan Compiled Laws, order the person to pay the costs of the prosecution.

(6) The court shall impose license sanctions pursuant to section 5.15b.

(7) A person who is convicted of violating subsection (2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both.

(8) If a person is convicted of violating subsection (3), the following shall apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Service to the community for a period of not more than 45 days.

(ii) Imprisonment for not more than 90 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Performing service to the community for a period of not less than 10 days or more than 90 days and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs within 10 years of 2 or more prior convictions, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1, 000.00, and either of the following:

(i) Performing service to the community for a period of not less than 10 days or more than 90 days and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year and may be sentenced to community service for not more than 90 days.

(d) As used in subdivisions (b) and (c), "prior conviction" means a conviction for a violation of MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b or a local ordinance substantially corresponding to MCLA 257.625(1), or former MCLA 257.625(1) or (2) or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b.

(e) In addition to imposing the sanctions prescribed in subdivision (a), (b), or (c), the court may, pursuant to the code of criminal procedure, Act No. 175 of the Public Acts of 1927, order the person to pay the costs of the prosecution.

(f) The court shall order the secretary of state to impose license sanctions pursuant to section 5.15b.

(g) A person sentenced to perform service to the community under this subsection shall not receive compensation, and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(9) If the township attorney intends to seek an enhanced sentence under subsection (4) (b) or (8) (b) or (c) based upon the defendant having 1 or more prior convictions, the township attorney shall include on the complaint and information filed in district court or probate court a statement listing the defendant's prior convictions.

(10) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) An abstract of conviction.

(h) A copy of the defendant's driving record.

(c) An admission by the defendant.

(11) A person who is convicted of an attempted violation of subsection (1) or (3) shall be punished as if the offense had been completed.

(12) When assessing points and taking licensing action under this act, the secretary of state and the court shall treat a

conviction of an attempted violation of subsection(1) or (3) the same as if the offense had been completed.

Sec. 5.15a. Arrest, preliminary chemical breath analysis, chemical test.

(1) A peace officer, without a warrant, may arrest a person when the peace officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vehicle involved in the accident in this township while in violation of section 5.15(1) or (3).

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, in this township, and that the person by the consumption of intoxicating liquor may have affected his or her ability to operate a vehicle, may require the person to submit to a preliminary chemical breath analysis. The following provisions shall apply with respect to a preliminary chemical breath analysis:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 5.15c(1) or in an administrative hearing solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subdivision does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(c) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 5.15c, 5.15d, 5.15e, and 5.15f for the purposes of chemical tests described in those sections.

(d) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction.

(3) The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding.

(b) A person arrested for a crime described in section 5.15c(1) shall be advised of all of the following:

(i) That if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests; that the results of the test are admissible in a judicial proceeding as provided under this act and shall be considered with other competent evidence in determining the innocence or guilt of the defendant; and that he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request.

(ii) That if he or she refuses the request of a peace officer to take a test described in subparagraph (i), a test shall not be given without a court order, but the peace officer may seek to obtain such a court order.

(iii) That his or her refusal of the request of a peace officer to take a test described in subparagraph (i) shall result in the suspension of his or her operator's or chauffeur's license or operating privilege, and in the addition of 6 points to his or her driver record.

(c) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for the purpose of determining the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures shall not attach to a qualified person who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

(d) A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 5.15c(1). A person who takes a chemical test administered at the request of a peace officer, as provided in this section, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this subsection within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged shall be responsible for obtaining a chemical analysis of the test sample.

(e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to the township attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(f) If, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

(g) The department of state police shall promulgate uniform rules for the administration of chemical tests for the purposes of this section.

(4) The provisions of subsection (3) relating to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether or not a person was impaired by, or under the influence of, intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(5) If a chemical test described in subsection (3) is administered, the results of the test shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The township attorney shall furnish the results at least 2 days before the day of the trial. The results of the test shall be offered as evidence by the township attorney in that trial. Failure to fully comply with the request shall bar the admission of the results into evidence by the township attorney.

(6) Except in a prosecution relating solely to a violation of section 5.15(1) (b), the amount of alcohol in the driver's blood at the time alleged as shown by chemical analysis of the person's blood, urine, or breath shall give rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a motor vehicle was not impaired due to the consumption of intoxicating liquor, and that the defendant was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10%, by weight of alcohol in the defendant's blood, it shall be presumed that the defendant's ability to operate a vehicle was impaired within the provisions of section 5.15 (3) due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor.

(7) A person's refusal to submit to a chemical test as provided in subsection (3) shall be admissible in a criminal prosecution for a crime described in section 5.15c(1) only for the purpose of showing that a test was offered to the defendant, but not as evidence in determining innocence or guilt of the defendant. The jury shall be instructed accordingly.

Sec. 5.15b. Arraignment, pretrial conference advising accused, licensing sanction.

(1) A person arrested for a misdemeanor violation of section 5.15(1) or (3), shall be arraigned on the citation, complaint, or warrant not more than 14 days after the date of arrest or, if an arrest warrant is reissued, not more than 14 days after the reissued arrest warrant is served.

(2) The court shall schedule a pretrial conference between the township attorney, the defendant, and the defendant's attorney in each case in which the defendant is charged with a misdemeanor violation of section 5.15(1) or (3). The pretrial conference shall be held not more than 35 days after the date of the person's arrest for the violation or, if an arrest warrant is reissued, not more than 35 days after the date the reissued arrest warrant is served, unless the court has only 1 judge who sits in more than 1 location in that district, in which case the pretrial conference shall be held not more than 42 days after the date of the person's arrest for the violation or, if an arrest warrant is reissued, not more than 42 days after the date the reissued arrest warrant is served. The court shall order the defendant to attend the pretrial conference and may accept a plea by the defendant at the conclusion of the pretrial conference. The court may adjourn the pretrial conference upon the motion of a party for good cause shown. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days. The court shall, except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an

interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, finally adjudicate, by a plea of guilty or nolo contendere, or the entry of a verdict, or by other final disposition, a case in which the defendant is charged with a misdemeanor violation of section 5.15(1) or (3) within 77 days after the person is arrested for the violation or, if an arrest warrant is reissued, not more than 77 days after the date the reissued arrest warrant is served.

(3) Before accepting a plea of guilty or nolo contendere under section 5.15, the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation, and shall advise the defendant that the maximum possible license sanctions that may be imposed will be based upon the master driving record maintained by the secretary of state pursuant to MCLA 257.204a.

(4) Before imposing sentence, other than court-ordered license sanctions, for a violation of section 5.15 (1) or (3), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(5) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 5.15 (1) or (3), whether or not the person is eligible to be sentenced as a multiple offender, the court shall consider all prior convictions currently entered upon the Michigan driving record of the person, except those convictions which, upon motion by the defendant, are determined by the court to be constitutionally invalid, and shall impose the following licensing sanctions:

(a) For a conviction under section 5.15 (1):

(i) If the court finds that the person has no prior convictions within 7 years for a violation of MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, a local ordinance substantially corresponding to MCLA 257.625(1) or (3), or former MCLA 257.625(1) or (2) or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 6 months or more than 2 years. The court may order the secretary of state to issue to the person a

restricted license during all or a specified portion of the period of suspension, except that a restricted license shall not be issued during the first 30 days of the period of suspension.

(ii) If the court finds that the person has 1 prior conviction within 7 years for a violation of MCLA 257.625(3) or former MCLA 257.625b, a local ordinance substantially corresponding to MCLA 257.625(3) or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(3) or former section 625b, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 6 months or more than 2 years. The court may order the secretary of state to issue to the person a restricted license during all or any portion of the period of suspension, except that a restricted license shall not be issued during the first 60 days of the period of suspension

(iii) If the court finds that the person has 1 or more prior convictions within 7 years for a violation of MCLA 257.625(1), (4), or (5), or former MCLA 257.625(1) or (2) a local ordinance substantially corresponding to MCLA 257.625(1) or former MCLA 257.625(1) or (2), or a law of another state substantially corresponding to 257.625(1), (4), or (5), or former MCLA 257.625(1) or (2), or that the person has 2 or more prior convictions within 10 years for a violation of MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, a local ordinance substantially corresponding to MCLA 257.625(1) or (3), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, the court shall order the secretary of state to revoke the operator's or chauffeur's license of the person and shall not order the secretary of state to issue a restricted license to the person.

(b) For a conviction under section 5.15(3):

(i) If the court finds that the convicted, person has no prior conviction within 7 years for a violation of MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, a local ordinance substantially corresponding to MCLA 257.625(1) or (3), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 90 days or more than 1 year. The court may order the secretary of state to issue to the person a restricted license during all or a specified portion of the period of suspension.

(ii) If the court finds that the person has 1 prior conviction within 7 years for a violation of MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, a local ordinance substantially corresponding to MCLA 257.625(1) or (3), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or MCLA 257.625b, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 6 months or more than 2 years. The court may order the secretary of state to issue to the person a restricted license during all or any portion of the suspension period, except that a restricted license shall not be issued during the first 60 days of the period of suspension.

(iii) If the court finds that the person has 2 or more prior convictions within 10 years for a violation of MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, a local ordinance substantially corresponding to MCLA 257.625(1) or (3), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, or a law of another state substantially corresponding to MCLA 257.625(1), (3), (4), or (5), or former MCLA 257.625(1) or (2), or former MCLA 257.625b, the court shall order the secretary of state to revoke the operator's or chauffeur's license of the person and shall not order the secretary of state to issue a restricted license to the person.

(6) A restricted license issued pursuant to an order under subsection (5) shall permit the person to whom it is issued to do 1 or more of the following:

- (a) Drive to and from the person's residence and work location.
- (b) Drive in the course of the person's employment or occupation.
- (c) Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the court.
- (d) Drive to and from the person's residence and the court probation department, or a court-ordered community service program, or both.
- (e) Drive to and from the person's residence and an educational institution at which the person is enrolled as a student.

(7) The court may order that the restricted license issued pursuant to subsection (5) include the requirement that the person shall not operate a motor vehicle unless the vehicle is equipped with a functioning ignition interlock device. The device shall be set to render the motor vehicle inoperable if the device detects a blood alcohol content of 0.02% or more by weight of alcohol in the person who offers a breath sample. The court may order

installation of an ignition interlock device on any motor vehicle that the person owns or operates, the costs of which shall be borne by the person whose license is restricted.

(8) The court shall not order the secretary of state under subsection (5) to issue a restricted license that would permit a person to operate a truck or truck tractor, including a trailer, that hauls hazardous materials.

(9) The court shall not order the secretary of state to issue a restricted license unless the person states under oath, and the court finds pursuant to testimony taken in open court or pursuant to statements contained in a sworn affidavit on a form prescribed by the state court administrator, that the person is unable to take public transportation to and from his or her work location, place of alcohol or drug education treatment, court-ordered community service program or educational institution, and does not have any family members or other individuals able to provide transportation.

(10) The court order issued under subsection (5) and the restricted license shall indicate the permitted destination of the person, the approved route or routes if specified by the court, and permitted times of travel.

(11) As used in this section, "work location" means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person's occupation, or both.

(12) Immediately upon acceptance by the court of a plea of guilty or nolo contendere or upon entry of a verdict of guilty for a violation of section 5.15(1) or (3), the person shall surrender to the court his or her operator's or chauffeur's license or permit. The court shall immediately destroy the license or permit and forward an abstract of conviction with court-ordered license sanctions to the secretary of state. Upon receipt of, and pursuant to, the abstract of conviction with court-ordered license sanctions, the secretary of state shall suspend or revoke the person's license and, if ordered by the court and the person is otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract. If the judgment and sentence is appealed to circuit court, the court may, ex parte, order the secretary of state to stay the suspension, revocation, or restricted license issued pursuant to this section pending the outcome of the appeal.

Sec. 5.15c. Consent to chemical test.

(1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to, motor vehicles, including an area designated for the parking of vehicles, within this township is considered to have

given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood, in all of the following circumstances:

(a) If the person is arrested for a violation of section 5.15(1) or (3).

(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe that the person was operating the vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance or while having a blood alcohol content of 0.10% or more by weight of alcohol.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician shall not be considered to have given consent to the withdrawal of blood.

(3) The tests shall be administered as provided in section 5.15a (3).

Sec. 5.15d. Refusal to submit to chemical test.

(1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 5.15a (3), a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) A written report shall immediately be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 5.15c (1), and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 5.15e. Notice of report.

(1) Upon receipt of the report made pursuant to section 5.15d, the secretary of state shall immediately notify the person in writing, mailed to his or her last known address, that the report has been received and that within fourteen (14) days of the date of the notice the person may request a hearing as provided in section 5.15f.

(2) The notice shall specifically state that failure to request a hearing within fourteen (14) days will result in the suspension

of the person's license or permit to drive. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel would be permitted to represent the person at the hearing.

Sec. 5.15f. Hearing, record, review.

(1) If a person who refuses to submit to a chemical test pursuant to 5.15d does not request a hearing within 14 days of the date of notice pursuant to section 5.15e, the secretary of state shall suspend or deny the person's operator's or chauffeur's license or permit to drive, or nonresident operating privilege, for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall deny to the person the issuance of a license or permit for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in MCLA 257.322. A person shall not order a hearing officer to make a particular finding on any issue enumerated under subdivisions (a) to (d). Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 5.15d, and if the township attorney requests receipt of the notice, to the township attorney of the township where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest and shall, except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, be finally adjudicated within 77 days after the date of arrest. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 5.15c(1).

(b) Whether the person was placed under arrest for a crime described in section 5.15c(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of the rights under section 5.15a(3).

(3) The hearing officer shall make a record of proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review pursuant to MCLA 257.323, the hearing officer shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings. Proceedings at which evidence was presented need not be transcribed and transmitted if the sole reason for review is to determine whether or not the court will order the issuance of a restricted license. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(4) After a hearing, if the person who requested the hearing does not prevail, the secretary of state shall suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person for a period of 6 months, or for a second or subsequent refusal within 7 years, for 1 year. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall deny to the person the issuance of a license or permit for a period of 6 months, or for a second or subsequent refusal within 7 years, for 1 year. The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in MCLA 257.323. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 5.15d may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in MCLA 257.323.

(5) When it has been finally determined that a nonresident's privilege to operate a vehicle in the state has been suspended or denied, the department shall give notice in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of each state in which he or she has a license to operate a motor vehicle.

Sec. 5.15g. Duty of officer upon refusal.

(1) If a person refuses a chemical test offered pursuant to section 5.15a(3), or submits to the chemical test and the test

reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall do all of the following:

(a) On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle, and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person that is valid until the criminal charges against the person are dismissed, or until the person pleads guilty or nolo contendere to, or is found guilty of, those charges. The temporary license or permit shall be on a form provided by the secretary of state.

(b) Except as provided in subsection (2), immediately do all of the following:

(i) Forward a copy of the written report of the person's refusal to submit to a chemical test to the secretary of state.

(ii) Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.

(iii) Except as provided in subsection (2), destroy the person's driver's license or permit.

(2) If a person submits to a chemical test offered pursuant to section 5.15a (3) that requires the withdrawal of blood and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1) (a) pending receipt of the test report. If, upon receipt, the report reveals a blood alcohol content of 0.10% or more by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1) (b). If, upon receipt, the report reveals a blood alcohol content of less than 0.10% by weight of alcohol, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results, and immediately return the person's license or permit by first-class mail to the address given at the time of arrest.