



# MICHIGAN STATE POLICE LEGAL UPDATE

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## CRIMINAL LAW

### **Michigan law prohibiting the possession of tasers and stun guns is unconstitutional.**

In [People v. Yanna](#), the Michigan Court of Appeals held [MCL 750.224a](#), which prohibits possession of a portable device or weapon from which an electrical current, impulse wave or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure or kill (e.g., tasers and stun guns) by anyone other than law enforcement officers, is unconstitutional.

In this case, one defendant was arrested for possessing a stun gun on his belt at his place of employment and the other defendant was arrested for possessing a stun gun in his residence.

The Court also held the complete ban on tasers and stun guns in the home violates the Second Amendment and a total prohibition on the open carrying of a protected arm such as a taser or stun gun is unconstitutional.

The Court limited its opinion only to the current version of [MCL 750.224a](#), not the recently passed version of this statute contained in [Public Act 122 of 2012](#), effective August 6, 2012, that allows the possession of a device that uses electro-muscular disruption technology (e.g., taser) by a person who holds a valid concealed pistol license.

**The Michigan Medical Marihuana Act does not protect a person from arrest if the person's registry identification card is not reasonably accessible at the location of arrest.**

In [People v. Nicholson](#), Nicholson was arrested and charged with possession of

approximately one ounce of marihuana. At the time of his arrest, Nicholson claimed to have paperwork showing his approval for use of marihuana for medical purposes; however, the paperwork was in his car at a different location.

Nicholson subsequently provided the trial court with both a copy of his valid application for a registry identification card which, by virtue of [MCL 333.26429\(b\)](#), was considered a valid registry identification card and the Michigan Department of Community Health issued registry identification card he received following his arrest.

[MCL 333.26424\(a\)](#) protects a qualifying patient who has been issued and possesses a registry identification card from arrest, prosecution, or penalty in any manner, for the medical use of marihuana in accordance with the Michigan Medical Marihuana Act (MMMA), provided the qualifying patient possesses an allowable amount of marihuana under the MMMA.

The Court concluded the language of [MCL 333.26424\(a\)](#) requires a defendant to presently possess his or her registry identification in order to qualify for immunity from arrest under the section. The Court also concluded that someone "possesses" a registry identification card only when the card is reasonably accessible at the location of that person's possession or use.

The Court held Nicholson did not possess his registry identification card at the time of his arrest because it was not reasonably accessible to him at the location of his arrest; therefore, he was not immune from arrest. The Court further held Nicholson did possess a registry identification card that had been issued before his arrest when prosecuted; therefore, Nicholson is immune from prosecution unless evidence shows his possession was not in accordance with the MMMA.