



Legal Update: What Law Enforcement Needs to Know Regarding Traffic Laws

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Part 1

Recent Court Decisions



HEIDI'S LAW

- 2006 PA 565, effective 1/3/07, MCL 257.625
- Eliminated 10 year time requirement for prior convictions. The result is that if a person at any time in his life has two prior convictions, may be charged with a felony.
- Requirement of 1 prior conviction within 7 years has not changed.
- Applies to OWI, impaired, child endangerment, zero tolerance with minor in vehicle and operating with presence of schedule one controlled substance.
- Added other ways to prove a prior conviction including court register of action, judgment of conviction or information contained in the PSR.



HEIDI'S LAW

People v. Perkins, published opinion from the court of appeals (Docket No. 281957, decided 8/19/08):

- The Court held that, for offenses occurring after the effective date of amended MCL 257.625, the state may properly charge defendants based on prior convictions that occurred more than ten (10) years before the date of the amendment.
- There was no violation of the ex post facto protections!
- On December 18, 2008, the Michigan Supreme Court affirmed the Court of Appeals decision.



.08 – What's New?

PENALTY FOR A REFUSING TO TAKE A CHEMICAL TEST HAS INCREASED

- One year suspension for first offense, two years for a second refusal in two years.

PRESUMPTION OF ALCOHOL IN YOUR BLOOD OR URINE

- No longer any presumptions in statute other than when blood or breath test is given, the results of the tests are presumed to be the same as at the time person was driving.



OUID

Schedule One:

- If any amount of a schedule one controlled substance (e.g. marijuana) or cocaine in body, need not prove that suspect was under the influence or impaired. MCL 257.625(8). If not schedule one or cocaine, must prove operating under the influence or impaired. MCL 257.625(1).
- 11-carboxy THC is a schedule 1 controlled substance -- the prosecution need not prove beyond a reasonable doubt that the defendant knew he was intoxicated. *People v Derror*, 475 Mich 316 (2006).



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MIP (MCL 436.1703)

- Federal District Court ruled that the portion of the MIP statute, compelling a PBT upon a finding a reasonable cause, constituted an unreasonable search without a warrant. *Platte, et al v Thomas Township, et al*, 504 F Supp 2d 227 (ED Mich, 2007).
- Police officers may not rely on any authority granted them pursuant to MCL 436.1703(6).



People v Rexford, 228 Mich App 371 (1998)

- Failure to perform weekly simulator tests on DataMaster does not render the results inadmissible per se.
- In this case, the failure to perform one weekly simulator did not render the test results inadmissible.



People v Wujkoski, 230 Mich App 181 (1998)

- A six second gap in observation prior to administering a DataMaster in violation of administrative rule does not automatically require suppression of breath test results.
- Officer/operator failed to observe the defendant for approximately 6 seconds while checking the time, with jailor observing the defendant.



People v Philabuan, 461 Mich 255 (1999)

A subject who refuses to submit to a chemical test **given pursuant to a search warrant** is subject to being charged with resisting or obstructing an officer (even if no active aggression was exhibited).



United States v Davis, No. 07-1964 (6th Cir., Dec. 19, 2008)

- The Court held that the “dangling ornament” provision of MCLA 257.709(1)(c) was unconstitutionally vague.
- On December 31, 2008, the Court withdrew its December 19, 2008 opinion.



Arizona v Johnson, U.S. Supreme Court, 1/26/09

- A reasonable passenger would understand that during the time a car is lawfully stopped, he or she is not free to terminate the encounter with the police and move about at will.
- An officer's inquiries into matters unrelated to the justification for the traffic stop do not convert the encounter into something other than a lawful seizure, so long as the inquiries do not extend the stop's duration.



Herring v U.S., U.S. Supreme Court, 1/14/09

- Suppression is not the remedy for a search incident to an arrest warrant that should have been recalled.
- Exclusion of the evidence was not required because the purpose of the exclusionary rule is to deter deliberate police misconduct, not negligent, non-recurring mistakes.



People v Burruss, Case No. 281039 (Mich. App., Nov. 18, 2009)

The dangling ornaments did not create reasonable suspicion for stopping a vehicle properly registered in another state.



Independent Tests

A person who takes a chemical test administered at a peace officer's request 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. MCL 257.625a(6)(d).



People v Anstey, 476 Mich 436 (2006)

- Dismissal of charges and suppression of evidence is not the appropriate remedy for violation of statutory right to an independent test
- Trial courts must give appropriate instructions, telling jurors that statutory right was violated



People v Yamat, 474 Mich 49 (2006)

Operate means “actual physical” – power or authority to guide or manage. Act of grabbing steering wheel and causing car to veer constitutes actual physical control.



Operate a Vehicle (not just “driving”)

A person, whether licensed or not, shall not **operate** a vehicle upon highway or other place open to the general public or generally accessible to motor vehicles including an area designated for the parking of vehicles.....MCL 257.625(1).



People v Wood, 450 Mich 399 (1995)

The term “operate” must be defined in terms of the danger the drunk driving statute was meant to prevent; the collision of a vehicle with other persons or property.



People v Stephens, 262 Mich App 213 (2004)

People v Solmonson, 261 Mich App 657 (2004)

Even if suspect was not “operating” at moment that police observed conduct (sleeping in a parked car), can still be charged and convicted if can prove circumstantially that suspect was operating vehicle while intoxicated prior to the police approach.



People v Nickerson, 227 Mich App 434 (1998)

Pit area of a speedway is
“generally accessible to motor vehicles”
even though there are age and waiver
requirements for admission.

What about private driveways?



People v Mungo, 277 Mich App 577 (2008)

May search vehicle incident to lawful arrest of passenger. Issue is before the United States Supreme Court. *Arizona v Gant*



People v Hrlic, 277 Mich App 260 (2008)

Signaling a lane change is required by the Michigan Vehicle Code and can be the basis for a traffic stop.



People v Bain, unpublished opinion from the Court of Appeals (Docket No. 268527, Decided 6/21/07)

- DataMaster test results had been ruled inadmissible by a Wayne Circuit Court Judge because it was not statistically supportable.
- COA reversed, but in a limited nonbinding opinion.



US v Ellison, 462 F2d 557 (6th Cir., 2006);
People v Jones, 260 Mich App 424 (2004)

There is no reasonable expectation of privacy in a license plate and it does not implicate the 4th Amendment to run the plate through LEIN.



People v Jones, 270 Mich App 86 (2008)

Canine sniff provides probable cause for issuance of a search warrant.



Scott v Harris, 127 S Ct 1769 (2007)

- A police officer's attempt to terminate a high-speed car chase that threatens the lives of innocent bystanders does not violate the 4th Amendment.
- Police officer is immune from lawsuit.
- Reviewing courts are allowed to view facts depicted by the videotape which captured events underlying excessive force.



Michigan's Medical Marihuana Act-Overview

Effective-December 4, 2008

- Michigan Department of Community Health (MDCH) will have 120 days after December 4, 2008, to adopt rules to implement the Act.
- If MDCH fails to adopt rules within 120 days, a qualifying patient could begin an action in the Ingham County Court.



Possession, Cultivation, and Plant Limits

- Qualifying Patient- Up to 2.5 ounces of Marihuana and 12 Marihuana plants in an enclosed, locked facility.
- Primary Caregiver-Up to 2.5 ounces, and if primary caregiver is specified by qualifying patient, then allowed to cultivate up to 12 Marihuana plants, kept in an enclosed, locked facility.



What is Prohibited Under the Act?

- Possessing Marihuana, or otherwise engaging in the medical use of Marihuana: in a school bus, on the grounds of any preschool or primary secondary school; or in any correctional facility.
- Smoking Marihuana on any form of public transportation, or in any public place.
- Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of Marihuana.



Operation of a Motor Vehicle

Although the Act prohibits the operation of any motor vehicle while under the influence of Marihuana; it does not make reference to Michigan's current OUID Per Se Law.



How Patients Acquire Marihuana?

Although the Act allows for the assertion of an affirmative defense (even for unregistered patients and caregivers) for the acquisition, possession, cultivation, use, delivery, transfer, or transportation of Marihuana or paraphernalia for medical use, it does not specify how patients and caregivers would acquire Marihuana for medical purposes.



Preliminary Examination Hearings

- 2007 PA 89, effective 12/29/07; MCL 766.11b
- Evidence of the results of properly performed drug analysis field testing is sufficient to establish that the substance tested is a controlled substance for purposes of a preliminary examination.



Children in Cars

- Makes it a crime to leave a child under 6 years of age unattended in a vehicle for a period of time or under circumstances that pose an unreasonable risk of harm to the child. MCL 750.135a.
- Unattended means alone or without the supervision of a person 13 years of age or older.
- Effective, April 1, 2009



ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT (ARIDE)

- Program was developed by NHTSA with input from the IACP.
- It was created to address the gap in training between the Standardized Field Sobriety Testing (SFST) and the Drug Evaluation Classification (DEC) Program.
- It provides officers with the opportunity to develop advanced skills and knowledge that will assist them in identifying alcohol and drug impaired drivers.



Difference Between DECP and ARIDE

DREs:

- 72 Hrs classroom
- Field certifications
- Comprehensive final knowledge examination
- Maintain certification through continuing education

ARIDE:

- 16 Hrs classroom
- Focus on SFST proficiency
- Broad knowledge of drug impairment indicators
- Introduction to drug identification matrix

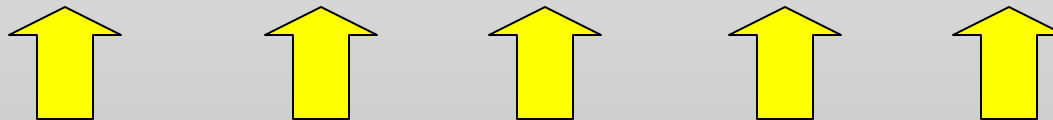


Relationship Between NHTSA Impaired Driving Programs

Drug Evaluation & Classification Program



Advanced Roadside Impaired Driving Enforcement



Standardized Field Sobriety Testing

Course Objectives

- Properly administer & articulate the SFSTs;
- Describe the relationship of drugs to impaired driving incidents;
- Observe, identify and articulate the observable signs of drug impairment;
- Recognize medical conditions which may mimic signs of impairment.



Legal Issues

- Reasonable Suspicion
 - To Stop
 - To Administer Field Sobriety Test
- Proper Administration of the SFSTs
 - Substantial Compliance
- Probable Cause for Arrest
- Roadside Questioning/Miranda
- Sufficiency of Evidence to Prove Elements of the Offense



GOALS OF ARIDE

- Able to determine if an individual is under the influence of a drug or drugs other than alcohol, or the combined influence and other drugs, or suffering from some injury or illness that produces similar signs to alcohol/drug impairment.
- Identify the broad category or categories of drugs inducing the observable signs and symptoms of impairment.



Why ARIDE?

- Better identification of drugged drivers
- Better arrests
- Better prosecutions
- Saved lives



QUESTIONS?



Fourteenth Annual Michigan Traffic Safety Summit



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Part 2

Legislative Update

2007-2008 Session Public Acts
2009-2010 Session New Bills



Summary of 2007-2008 Session

- 197 bills introduced to amend the Michigan Vehicle Code
- 24 public acts
- 3 passed in 2007
- 21 passed in 2008
 - 9 passed on December 30
- Several are “paperwork” changes with little or no impact on law enforcement



2007 PA 70 and PA 71

- 2007 SB 210 and SB 211
- Title and registration fee distribution



2007 PA 143

- 2007 SB 79
- Eliminates requirement to sign registration certificate



2008 PA 7

- 2007 HB 4505
- Prohibit SOS from issuing license to illegal alien



2008 PA 19

- 2007 HB 5021
- Revises prohibitions on television monitors in motor vehicles



2008 PA 36

- 2007 SB 712
- Anatomical gift



2008 PA 43

- 2007 SB 82
- Requires child restraint system instead of safety belt for children between ages four and eight and under 4'9"
- Placed in MCL 257.710e



2008 PA 104

- 2007 SB 104
- Eliminates Negligent Homicide and Felonious Driving statutes
- Creates enhanced penalties within Reckless Driving statute



2008 PA 131

- 2008 HB 5695
- Revises loading requirements for logs or tubular products



2008 PA 171

- 2007 HB 4817
- Expand the use of volunteers for parking violation enforcement



2008 PA 280 and PA 281

- 2008 SB 1464 and SB 1565
- Extends sunset provision for certain title and registration fees



2008 PA 296

- 2007 HB 4468
- Moving violation causing injury or death in work zone
- Expands section from workers to any person



2008 PA 298

- 2007 HB 5351
- Require drivers to obey traffic regulator in work zone



2008 PA 304

- 2008 HB 6414
- Establishes High Occupancy Vehicle lanes



2008 PA 341

- 2007 HB 5160
- Allow use of additional out-of-state prior offenses for enhanced OWI penalties



2008 PA 346

- 2007 HB 4847
- Movement of money to general fund from earmarked funds for some operator and chauffeur license fees



2008 PA 460

- 2008 HB 6455
- Allows for an installment payment plan for victims of driver responsibility fees



2008 PA 461

- 2007 HB 4289
- Ignition interlock device for high BAC



2008 PA 462

- 2008 SB 1134
- Ignition interlock for high BAC



2008 PA 464

- 2007 HB 4017
- Due care and caution when passing solid waste collection vehicle, utility service vehicle, or road maintenance vehicle



2008 PA 539

- 2007 HB 4839
- Abandoned vehicle cleanup



2008 PA 579

- 2008 SB 1525
- Requires website posting of seasonal weight restrictions



2008 PA 586

- 2008 SB 1066
- Driver improvement school in lieu of points for some offenses



2009-2010 Session So Far...

- 47 bills introduced by March 11
 - 18 Senate
 - 29 House
- Most are recycled from bills that died in previous sessions



2009 SB 276

- Cleanup of MCL 257.709 resulting from *Davis* decision
- Would allow dangling ornaments rather than clarifying restrictions or providing for complete prohibition



2009 SB 277 and HB 4494

- Would prohibit registering a retired police car without removing all distinctive markings



2009 SB 341 and HB 4360

- Would specifically exempt newspaper delivery carriers from safety belt requirement



2009 HB 4163

- Would require the use of windshield wipers during inclement weather



2009 HB 4369

- Would prohibit the use of cell phones while driving



2009 HB 4394

- Would prohibit reading, writing, or texting while driving



2009 HB 4417

- Would allow amber strobe lights on driver education vehicles



2009 HB 4450

- Would require children in child restraint seats to be positioned in rear seat, if available
- Would repeal nursing child exemption



2009 HB 4495

- Would amend definition of moped to include higher horsepower



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