MICHIGAN STATE POLICE

LEGAL UPDATE

APRIL 2006

This update is published by the Michigan State Police Executive Division. Questions and comments may be directed to the Executive Resource Section at MSPLegal@Michigan.gov.

STATUTORY CHANGES

To read the full text of these statutes go to www.michiganlegislature.org, or click on the public act number following each summary.

MCL 205.422 & 205.428

Gray market cigarettes
Effective January 15, 2006

The act creates new felonies for possession of counterfeit cigarette papers, gray market cigarettes, and gray market cigarette papers are now violations of the tobacco tax act.

Note: Gray market products are typically marked with fine-print that indicates the product is intended for sale outside of the United States.

Public Act 238 of 2005

MCL 257.627

Truck speed limit increased to 60 mph
Effective November 9, 2006

The speed limit for trucks, truck-tractors, and truck-tractors with a semi-trailer will increase to 60 mph on 70 mph freeways.

Public Act 19 of 2006

MCL 750.540

Prohibited tampering with any electronic communication
Effective June 1, 2006

The amended phone tampering statute makes it a felony to interfere with electronic communication mediums including phones and computers. It includes "willfully and maliciously" interrupting service or message delivery, and reading or copying messages from an electronic medium accessed without authorization.

Public Act 61 of 2006

MCL 28.730

Public email notification of sex offender address changes
Effective January 1, 2007

The MSP will provide a ListServ that will notify subscribers of changes to the sex offender registry within a specified zip code.

Public Act 46 of 2006

MCL 750.508

Police scanners in motor vehicles
Effective May 1, 2006

Citizens will no longer be required to obtain a permit from the State Police in order to equip a motor vehicle with a scanner. Instead, it will be a crime if a scanner (regardless of its location) is used in the commission of a crime with a penalty of 93 days or more.

A person who has been convicted of a felony within the past 5 years is prohibited from possessing a scanner at any time.

Public Act 39 of 2006

MCL 28.432

CPL holders may possess a pistol registered to another person
Effective July 1, 2006

A Concealed Pistol License holder will be permitted to carry a pistol properly registered to another person.

Note: Persons who have not been issued a CPL will continue to be prohibited from carrying another person's pistol.

Public Act 75 of 2006

MCL 28.425

Expired Concealed Pistol License (CPL) may be valid when coupled with receipt from county clerk.
Effective July 1, 2006

When a CPL holder applies for a license renewal, the county clerk must provide a receipt for the application. The licensing board must renew or deny the renewal application within 60 days.

If the board fails to renew or deny the application, the expiration of the CPL is automatically extended until the board issues a new license, or 180 days, whichever comes first.

In order for the extension to be valid, the CPL holder must carry both the expired license and the receipt, and present both to police officers when stopped.

Public Act 92 of 2006

SEARCH & SEIZURE

Full citations have been omitted.

Consent Searches

When one occupant gives consent and another refuses to give consent, police may not search for evidence to be used against the refusing party – if the refusing party is physically present.

In *Georgia v. Randolph*, a United States Supreme Court case, police asked the defendant's spouse for consent to search for drugs in a jointly owned residence – after the defendant had refused to give consent.

The court held that a "disputed invitation" to enter a residence cannot overcome the protections guaranteed by the fourth Amendment. As a result, evidence gathered was not admissible against the refusing defendant.

The court did not overrule its previous decisions allowing consent to be given by another occupant when the suspect is not present.

Anticipatory Search Warrants

Anticipatory search warrants are valid so long as the affidavit establishes probable cause that the evidence will be there when the warrant is executed.

In *United States v. Grubbs*, a postal inspector received a search warrant based upon an affidavit indicating that child pornography would be delivered to the defendant's residence at a future time.

The United States Supreme Court approved the use of anticipatory search warrants as long as the affidavit establishes probable cause that that the triggering event will occur, and probable cause that particular evidence will be found when the triggering event occurs.

Traffic Stop for Vision Obstruction

In order to stop a vehicle for a "dangling ornament" vision obstruction, police do not have to show that the item was, in fact, obstructing the driver's vision.

The driver in *People v. Almond* was stopped because of a "prism" hanging from the rearview mirror in his car. He was ultimately arrested for various firearms and narcotics offenses, and later convicted.

In reviewing the conviction, the Michigan Court of Appeals upheld the constitutionality of the vision obstruction statute (MCL 257.709). The court also held that a police officer may stop a driver for violating the statute as long as the officer has *reasonable suspicion* that the item obstructs the driver's vision – no proof of an actual obstruction is required.

CRIMINAL LAW

Full citations have been omitted.

A history of seizures may be evidence of malice sufficient to prove second-degree murder after a fatal traffic accident.

The defendant in *People v. Eaton* suffered a seizure while driving, lost control of his vehicle, and struck and killed two people. The defendant had a history of having seizures while driving and had been involved in accidents resulting from his seizures. He had also lied to his doctor about his seizures in order to have his driving privileges reinstated. He was also aware that his medication wasn't working properly.

Even though the defendant did not intend to harm anyone, the Michigan Court of Appeals held that the combination of those facts was enough to establish malice for the purposes of proving second-degree murder.

ATTORNEY GENERAL OPINIONS

AG Opinion No. 7183

Possession of a machine gun is lawful under certain circumstances
Opinion dated December 29, 2005

This opinion affects the application of MCL 750.224 (Unlawful Weapons). Prior to this opinion, Michigan law was interpreted to prohibit possession of a machine gun under all circumstances. However, section 224 contains a provision that allows for lawful possession of machine when the possessor has been *licensed* by the ATF.

In this opinion, the Attorney General states that a properly executed ATF Form 4 constitutes a "license" for the purposes of the Michigan statute. Therefore, a person may possess a machine gun transferred using a Form 4. Federal law requires that the transferee maintain a copy of Form 4, but does not require that the form be kept with the machine gun. A properly executed Form 4 will bear an embossed seal and the signature of the head of the ATF's National Firearms Act (NFA) branch.

For assistance in determining whether a machine gun has been properly registered or transferred under the NFA, police officers should contact the ATF's Detroit Field Division at (313) 259-8050.

AG Opinion No. 7183

AG Opinion No. 7191

Police may rely on an acknowledgement of parentage in determining custody of a child
Opinion dated March 28, 2006

This opinion states that a "duly executed" acknowledgement of parentage establishes that a mother is presumed to have custody of the child named in the acknowledgment, and that a police agency may rely on the acknowledgement when assisting with child custody issues.

The acknowledgement is superseded by a court order or written agreement between the parents. The acknowledgement may in the form of an Affidavit of Parentage filed with the state registrar.

AG Opinion No. 7191

OUIL LAW

Note: The following material does not represent new law; rather it addresses issues raised by worksites throughout the state.

Suspects should generally be afforded the opportunity to take an independent test – no matter how unreasonable it may seem to be.

Michigan appellate courts have consistently held that the courts, and not police, make determinations of reasonableness. *People v. Wager.*

MCL 257.625a requires police to provide persons who have submitted to a test offered by police with "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…"

"Reasonable Opportunity"

Under the statute, the arresting agency is responsible for providing the opportunity for a test. Michigan courts have given very little guidance on the application of the "opportunity" portion of the statute.

Officers confronted with a request that seems extremely unreasonable due to distance or other physical barriers should contact their prosecutor before refusing to facilitate a test.

If a suspect asks for a test by a person or facility of unknown availability, officers should have the suspect make arrangements from the jail, post, or police station prior to transportation to the testing facility.

"Reasonable Time"

In *People v. Prelesnik*, the suspect made his request for an independent test to a jailor, 3 hours and 45 minutes after his arrest. In *People v. Quada*, the independent test was to be administered almost 4 hours after arrest. In both cases, police refused to provide the test due to the lapsed time. In both cases the otherwise valid tests administered by arresting officers were held inadmissible, and the cases were dismissed.

Officers should generally honor requests for independent tests made anytime between arrest and release or arraignment.

"Person of their own choosing"

The suspect has the right to make the choice of who will provide an independent test. In *People v. Anstey*, the suspect was lodged at the Berrien County Jail and twice asked for his own tests at locations in Michigan and South Bend, Indiana. The arresting officer refused to take the suspect to the requested locations, but offered to take the suspect to a closer hospital. Ultimately, the case was dismissed because the officer, and not the suspect, made the choice.

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