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LEGAL UPDATE

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Attorney General states emergency services providers may not detain an individual suspected of carrying a communicable disease.

The Public Health Code does not authorize licensed emergency medical services personnel to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome (SARS) or smallpox. Only a local health department and the Michigan Department of Community Health are authorized to seek an order of the circuit court to detain individuals suspected of carrying communicable diseases, and except in the case of an emergency, such an order is subject to notice and opportunity for a hearing.

Neither the Public Health Code nor the Fire Prevention Code authorize the commanding officer of the fire department of a city, village, township, or county, or a firefighter in uniform acting under the orders and directions of the commanding officer, to detain an individual suspected of carrying a communicable disease, such as severe acute respiratory syndrome or smallpox. Opinion No. 7141(October 6, 2003)

When the Sixth Amendment right to counsel is invoked, officers may NOT initiate questioning on that charge.

Subject was charged for CSC on his five-year-old stepson. He was lodged and prior to his arraignment the officer in charge of the case talked to him about taking a polygraph. Later that day he was arraigned on the charge and returned to the jail. Two weeks after his arraignment, the officer contacted him in jail and asked him if he still wanted to take the polygraph. The subject agreed and informed the officer that he did not want his attorney present but would like the opportunity to discuss the results with his trial counsel. The next day, he was taken out of jail and brought to the polygraph where he waived his rights and failed the examination. The officers then interviewed him and they testified that he confessed and recanted twice during the interview. The defendant claimed that he maintained his innocence throughout the interview. The trial court allowed in the post polygraph statements and he was subsequently convicted of the charges. He argued on appeal that the statements should have been suppressed.

HELD: "*The Sixth Amendment right to counsel provides that 'in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.'* This amendment thus affords an accused the right to rely on counsel as an intermediary between him and the state. When a defendant invokes the Sixth Amendment right to counsel, *any subsequent waiver of this right in a police-initiated custodial interview is ineffective* with respect to the charges filed against the defendant. An *exception* to this rule exists where the defendant initiates the contact and makes a valid waiver of his rights."

"On the instant facts, we are convinced that defendant's statements were obtained in violation of his Sixth Amendment right to counsel. In *People v Anderson*, our Supreme Court suppressed statements that were given under similar circumstances. While the police in *Anderson* initially contacted the defendant regarding a polygraph before his arraignment, they left a telephone message concerning the actual arrangements at the defendant's home after he had been arraigned and appointed counsel. After the polygraph was administered,

the police reminded the defendant of his *Miranda* rights and proceeded to obtain several damaging statements. These statements were ultimately deemed inadmissible because the defendant did not initiate the post-arraignment communication. Similarly, in the instant case, it was the police that contacted defendant regarding the polygraph arrangements. And notably, this visit occurred while defendant was *in jail* and after his arraignment. It is further undisputed that the police knew defendant had been arraigned and appointed counsel at the time of this contact." The statements were suppressed and a new trial ordered. People v Harrington, C/A No. 239699 (October 2, 2003)

CSC fourth constitutes an assault for Home Invasion charges.

The victim in this case testified that she was sleeping on the couch in her living room when she woke up and saw the defendant standing above her. He grabbed her breasts and tried to slip his hand up her nightgown. He also got on top of her and rubbed his penis over her clothes. Eventually, the victim's mother-in-law came home and the suspect was scared away. He was subsequently convicted of CSC fourth and home invasion one. He argued on appeal that he could not be convicted of home invasion one because CSC 4 is a misdemeanor.

HELD - For first-degree home invasion the offense must be based on an intent to commit, or the actual commission of, a felony, larceny, or assault. Defendant contends that he did not commit one of the enumerated offenses under the home invasion statute because fourth-degree CSC is only a misdemeanor and is not an assault. Michigan has defined the term assault as "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." "We hold that fourth-degree CSC constitutes an assault for the purposes of the home invasion statute, and therefore defendant's conviction for home invasion must be affirmed." People v Musser, C/A No. 239922 (October 28, 2003)

District court judges may issue search warrants – PA 165 of 2003 (October 17, 2003)

Under previous legislation there was a question whether district court magistrates could issue search warrants for evidence other than for OUIL cases. This issue was resolved in PA 165 of 2003, which rewrote MCL 780.651(3):

(3) A judge or district court magistrate may issue a written search warrant in person or by any electronic or electromagnetic means of communication, including by facsimile or over a computer network.