MICHIGAN STATE POLICE

LEGAL UPDATE

JULY 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.

IN THIS ISSUE...

STATUTES

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

MCL 750.168 and 750.167d

Disorderly conduct at funerals

Effective August 22, 2006 (PA 148 & 150)

A package of bills designed to address disorderly conduct at funerals will be effective August 22nd.

PA 148 of 2006 created a new section of criminal law – MCL 750.167d. This section makes it a crime to engage in disorderly conduct within 500 feet of a funeral, memorial service, or viewing of a deceased person.

Conduct prohibited under the new section includes: making a loud and raucous noise after being asked to stop, making any statement or gesture that would intimidate a reasonable person, and engaging in any other conduct that the person should reasonably know will adversely affect the funeral.

PA 150 of 2006 amends MCL 750.168 by making it a felony to violate the newly created MCL 750.167d.

PA 152 of 2006, which was effective May 24th, allows local units of government to enact ordinances necessary to protect people attending funerals. Ordinances allowed include requiring a permit for demonstrations on public property near a funeral.

Public Act 148 of 2006

Public Act 150 of 2006

Public Act 152 of 2006

MCL 29.19

School lockdown drills required

Effective June 19, 2006

The statute requiring fire and tornado drills in schools now requires that schools (K – 12) have at least two drills per year in which the building is secured and the occupants are restricted to the interior. Such drills must include security measures appropriate to a HAZMAT spill or the presence of an armed individual.

While not criminal in nature, the statute does require that schools coordinate with local emergency managers and police agencies. This requirement may lead to the participation of police officers in drills conducted under this statute.

MCL 29.19

LEGAL RESOURCES

The Michigan Court of Appeals website provides public access to Michigan Court of Appeals and Supreme Court decisions issued since 1996. Cases can be searched by docket number, party name, or attorney name. In addition, the results of a search will provide the user with a history of all pleadings and filings associated with the appellate portion of a case.

Concealed Pistol Licenses to expire on holder's date of birth
Effective June 19, 2006

Under the amended statute, newly issued or renewed CPLs will expire on the date of birth of the applicant, rather than the date of issue as previously required.

MCL 28.425l

CRIMINAL LAW & PROCEDURE

Full citations have been omitted.

Metabolized THC is a schedule 1 controlled substance and its presence in blood may be used to convict a person of OUID.

In *People v. Derror*, the Michigan Supreme Court held that a person with metabolized THC in their body may be prosecuted under MCL 257.625(8). The statute prohibits driving with any amount of a schedule 1 controlled substance in the body.

The Court also held in such cases the prosecutor does not have to prove that the person knew he or she might be intoxicated. The prosecutor only has to prove "that the defendant has any amount of a schedule 1 controlled substance in his or her body."

In *Derror*, the Court was examining two consolidated cases where persons arrested for OUID were given blood tests within several hours of being arrested, and Metabolized THC was found. The Court wasn't concerned with the amount of time lapsed between arrest and the test, and noted that MCL 257.625(8) "does not require intoxication or impairment" and only requires that a driver have "*any amount* of a schedule 1 controlled substance in his or her body" (emphasis added).

9-1-1 tapes may be admissible evidence.

In *Davis v. Washington*, a victim of domestic violence called 9-1-1 to report the crime. During the call, a radio operator asked specific questions regarding the crime. The victim did not appear to testify at trial, and the state offered the 9-1-1 tapes as evidence.

The United States Supreme Court held that the tapes were admissible because the questioning by the radio operator was done to facilitate police assistance at an ongoing emergency. The victim's statements were made because "she was seeking aid, not telling a story about the past."

The Court contrasted this case with a companion case in which the victim was interviewed some time after the assault (police were present and able to protect the victim). In the companion case, the victim's statements to police were inadmissible hearsay because they were gathered for the purpose of proving the crime, not to meet an ongoing emergency.

Treaty requires police to notify arrested foreign nationals of certain rights.

In *Sanchez-Llamas v. Oregon*, the United States Supreme Court decided two cases in which defendants, both foreign nationals, asked that their convictions be overturned because arresting police agencies failed to notify them of their right to have the consulate of their home country notified as required by the Vienna Convention on Consular Relations.

The Convention is a treaty to which the United States is a party. It provides, in pertinent part, that a foreign national who has been arrested shall be informed "without delay" of his or her rights to communicate with the consulate of their home country. The Convention also requires that the arresting authority notify the consulate of the arrest (see Article 36).

Continued next page…

Treaty, continued

The Court held that the convictions should not be overturned as a result of the failure to notify. However, the Court did confirm that police agencies in the United States do have a duty to follow the terms of the convention.

Information concerning the Convention can be found on the United States Department of State's Consular Notification and Access webpage, which provides information for law enforcement concerning the notification requirements, including sample statements and lists of consulates and embassies in the United States.

Officers should note that the Convention does not change procedural requirements contained in state or federal law – the same procedures should be followed no matter the nationality of the suspect.

It is also worth noting that while foreign nationals have a right to have their consulate notified and to communicate with their consulate, nothing in the Convention allows consular officials to represent the suspect or otherwise interfere with, or take part in, a police investigation.

SEARCH & SEIZURE

Full citations have been omitted.

Knock-and-announce…revisited.

The June 2006 edition of the Legal Update featured a United States Supreme Court case that addressed the knock-and-announce rule. The case generated questions throughout the state. The answer to all of those questions was: *The knock-and-announce rule is still in effect*.

In fact, Michigan law (MCL 780.656) still requires that officers knock-and-announce before force is used to gain entry during execution of a search warrant. The exceptions to the rule under state and federal law have not changed – they must be based upon reasonable concerns for officer safety or destruction of evidence.

The Supreme Court case cited in the June Legal Update did nothing more than decide that suppression of evidence is not the appropriate remedy for violations of the rule. But the Court went to great lengths to point out that the rule must still be followed. They also pointed out that officers and their departments may still be liable in costly civil rights suits should they violate the rule.

DID YOU KNOW?

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

Without more, the smell of contraband may establish probable cause.

In *People v. Kazmierczak*, a Michigan Supreme Court case decided in 2000, the Court held that "the smell of marijuana alone by a person qualified to know the odor may establish probable cause to search a motor vehicle."

In *Kazmierczak*, a police officer stopped the defendant's vehicle for speeding and smelled unburned marijuana emanating from the vehicle. No other violations were alleged and the officer relied only upon what he smelled in conducting a search. The Court upheld the search because the officer was qualified to know the smell of marijuana; he had previously investigated marijuana cases.

The Court did note that smell alone only provides probable cause to conduct a warrantless search of a vehicle – it falls under the umbrella of other exceptions to the search warrant rule that are specific to vehicles. Searches of buildings must still be conducted pursuant to a search warrant, but odor may be used as a factor establishing probable cause for a warrant.

It should also be noted that the scope of this case need not be limited to marijuana. It might be applied whenever an officer "smells an odor sufficiently distinctive to identify contraband."

BACK TO BASICS!

Note: The following material does not represent new law. Instead, it is intended to reinforce basic rules of law that police officers frequently apply.

Police must disclose all information that might be favorable to the defense.

In *Brady v. Maryland*, a 1963 United States Supreme Court case, the Court held that a guilty verdict may be overturned when the police withhold evidence that may be "materially favorable to the accused."

Subsequent Supreme Court cases held that the rule applies to both impeachment and exculpatory evidence (*United States v. Bagley*), as well as evidence not known to the prosecutor, but found by the police (*Kyles v. Whitley*).

Evidence governed by these cases is "material" under the standard established by *Brady* if, had the evidence been disclosed to the defense, there would be a "reasonable probability that…the result of the proceeding would have been different" (*Strickler v. Greene*). In such cases, the defense does not have to show that the evidence would have led to an acquittal (*Kyles*).

In order to ensure that prosecutors are able to meet their obligations, police officers should always disclose evidence obtained in a case to their prosecutors. The form and manner of such disclosures should be in accordance with individual department and prosecutor policies.

Officers should not attempt to make independent judgments about the value or credibility of evidence obtained. Instead, all evidence potentially favorable to the defense should be disclosed to the prosecuting attorney so that he or she may determine whether the evidence should be disclosed to the defense. Ultimately, the choice is one for the prosecutor to make, not the police.

SUBSCRIPTIONS

It is the intent of the Executive Division to provide the Legal Update to all interested law enforcement officers. Officers from any agency are welcome to subscribe, and may do so by sending an e-mail to MSPLegal@Michigan.gov. The body of the e-mail must include:

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