MICHIGAN STATE POLICE

LEGAL UPDATE

JUNE 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.

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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 750.520n

Lifetime electronic monitoring of adults convicted of CSC with a victim under 13.
Effective August 28, 2006

As part of a package of acts addressing criminal sexual conduct, PA 171 of 2006 creates MCL 750.520n which requires the lifetime electronic monitoring of persons over 17 who are convicted of committing CSC when the victim is under 13. The new section also makes it a felony to damage, remove, or alter the monitoring device.

Public Act 171 of 2006

MCL 257.224

Replacement of Michigan license plates; all plates to be of one design.
Effective June 6, 2006

Public Act 177 of 2006 mandates that, *beginning January 1, 2007*, the Secretary of State shall issue license plates of a uniform design. While SOS has not made a formal decision concerning the new design, the act requires that they be fully reflectorized and of a common color scheme. The effect of this act is that by the end of 2007, all current blue Michigan license plates will be replaced with one new design.

Public Act 177 of 2006

MCL 333.7523, MCL 600.4703-4708, MCL 750.535a

Forfeited funds may be deposited into interest bearing accounts.
Effective May 5, 2006

Michigan's forfeiture statutes (narcotics, chop shop, etc.) were amended by PAs 128-130 of 2006 to allow forfeited money to be deposited into interest bearing bank accounts. If the government fails to meet its burden during forfeiture proceedings, the forfeited funds and the interest must be returned to the person or entity from whom the money was seized.

Public Act 128 of 2006

Public Act 129 of 2006

Public Act 130 of 2006

CRIMINAL LAW & PROCEDURE

Full citations have been omitted.

Aiding and abetting one crime can give rise to criminal liability for another crime.

In *People v. Robinson*, a Michigan Supreme Court case, two defendants (Robinson and Pannell) agreed to commit an aggravated assault together. The victim had threatened Pannell's family, and this assault was intended as an act of revenge. Robinson began the assault by striking the victim in the face, knocking him to the ground.

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Aiding and abetting, continued

Pannell repeatedly kicked and punched the victim, and Robinson departed, telling Pannell "that's enough." After Robinson left, Pannell shot and killed the victim.

Robinson was convicted of second degree murder pursuant to MCL 767.39, Michigan's "aiding and abetting" statute. That statute does not constitute a separate offense; rather it imposes criminal liability for the crimes of the principal actor on those who aid and abet.

In this case, the court held that not only can a defendant be held liable for *the* crime he helped commit, but he can also be liable for *any* crime that is the "natural and probable" result of the crime with which he assisted.

Robinson's conviction was upheld because "homicide might be expected to happen" during an aggravated assault given that Robinson knew Pannell was angry with the victim, assisted with (and initiated) the assault, and did nothing to protect the victim.

The definition of "operate" in the Michigan Vehicle Code does not require exclusive or complete control of a vehicle.

In *People v. Yamat*, the defendant was a passenger in a vehicle driven by his girlfriend, with whom he was arguing. The defendant grabbed the steering wheel, causing the vehicle to veer off the road and strike a jogger. The jogger was severely injured and the defendant was charged with felonious driving.

At issue in this case was whether grabbing a steering wheel is "operating" a vehicle under the vehicle code. The Michigan Supreme Court held that it was.

The court held that the vehicle code's definition of "operate" neither requires exclusive or complete control of a vehicle. Nor does the vehicle code require "control over all functions necessary to make the vehicle operate."

In order to operate a vehicle under the vehicle code, "actual physical control" is required, which the court defined as the "power to guide the vehicle." Under that definition, grabbing a steering wheel is enough to exert the actual physical control required by the vehicle code.

Proof of the underlying crime is enough to introduce defendant's statements indicating they were an accessory after the fact.

In *People v. King*, two men committed a murder, larceny, and UDAA in Michigan. The defendant traveled with the killers to New Mexico in the victim's car, where she was arrested. She was interviewed by detectives from Michigan and admitted to knowing about the murder, traveling to New Mexico in the victim's car, and other incriminating statements. She was charged and convicted as an accessory after the fact.

At issue in the case was the corpus delicti rule, which forbids the use of a suspect's statement in court unless evidence independent of the crime is introduced first. The purpose of the rule is to prevent the use of a confession to a crime that didn't occur.

The Michigan Court of Appeals held that in an accessory case, evidence of the underlying crime is enough to satisfy the rule and admit the accessory's confession. In other words, evidence that the person actually was an accessory is not required for admission of the confession; all that is required is evidence that the crime they assisted with occurred.

LEGAL RESOURCES

The United States Government Printing Office maintains the printed material generated by all three branches of the federal government, including federal laws, regulations, and forms. Their website, GPO Access, provides links to the electronic versions of material maintained by the GPO.

SEARCH & SEIZURE

Full citations have been omitted.

Violating the "knock-and-announce" rule does not result in suppression of evidence.

In *Hudson v. Michigan*, the United States Supreme Court addressed the proper remedy for police violation of the knock-and-announce rule, a rule that remains in force.

In *Hudson*, police obtained a search warrant for the defendant's residence and executed it by knocking, waiting for less than five seconds, and entering the residence. They found drugs and a gun.

The court held that the exclusionary rule does not apply to knock-and-announce violations. The exclusionary rule is designed to prevent the use of evidence that was only found because of a violation of the Constitution. However, when police have a warrant, they will find the evidence lawfully, even if they didn't follow the knock-and-announce rule. Put another way, the knock-and-announce violation didn't lead to discovery of evidence, the search warrant did.

Officers are reminded that the knock-and-announce rule is still in effect. Although violation of the rule will not result in suppression of evidence found during the search, officers (and their departments) can still be held civilly liable for violations of the rule. Officers could also be subject to discipline if their failure to properly knock-and-announce violates their department policy.

Police response to a burglar alarm may justify warrantless entry into a residence.

In *United States v. Brown*, police responded to a reported activation of the defendant's home security system. No evidence of forced entry was found, but a basement door was found ajar and it appeared that no one was home.

When the officers searched the residence for possible intruders, they found 176 marijuana plants in the basement. The responding officers then secured the scene and obtained a search warrant to seize the marijuana and other evidence.

The United States Sixth Circuit Court of Appeals upheld the search and seizure as valid under the exigent circumstances exception to the search warrant rule. Specifically, the court found exigent circumstances when police reasonably believed that a burglary was in progress, based on a review of the totality of the circumstances.

The court also noted that such reasonable searches are not limited to a "main area" of a residence. Rather the circumstances justify "the brief and cursory inspection" of the entire premises.

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.

Under certain circumstances, police may enter a private building to arrest a felon they are pursuing.

In *Warden v. Hayden*, the United States Supreme Court created the **hot pursuit exception** to the search warrant rule. Subsequent case and statutory law have established that the following elements must be met in order to allow a search under this exception in Michigan:

1. Police are actively pursing a suspect
2. Probable cause that the person committed a felony
3. Exigent circumstances require immediate arrest

The general thrust of this exception is to prevent a defendant from entering private property in order to thwart an arrest that would have been proper had it been made in public.

Officers who enter a private building under this exception to make an arrest and who later find possible evidence, should generally secure the building and obtain a search warrant before further searching.

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Hot pursuit, continued

Active Pursuit

This exception can generally only be employed when officers are pursuing the suspect at the time the entry is made. If officers "lose" the suspect and later determine his or her whereabouts, a search warrant may be needed for entry absent exigent circumstances.

Felony Requirement

The hot pursuit exception requires officers to have probable cause that a crime was committed, and Michigan law requires that the crime be a felony. Misdemeanor fleeing and eluding does not qualify for the exception under Michigan law.

Exigent Circumstances

Courts have determined that exigent circumstances include the need to prevent the escape of a fleeing felon, the imminent destruction of evidence, and the risk of danger to police or others. In order to use this exception, there must be probable cause that one of those factors exists.

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:

1. Name (first & last)
2. Rank
3. Department
4. Work phone
5. E-mail address

DID YOU KNOW?

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

It is generally illegal to use or display the emblem or name of an organization without authorization.

MCL 430.52 makes it a misdemeanor to "wear or exhibit the badge, button, emblem, decoration, insignia, or charm…of any benevolent, humane, fraternal, or charitable corporation" *unless authorized* by the organization. The statute also criminalizes assuming the name of one of those organizations, using a name closely resembling their names, or falsely claiming to be a member.

Companion statute addressing display of an emblem on a vehicle is <u>not</u> valid.

In 1979, the Michigan Court of Appeals invalidated MCL 430.53. That statute mirrored MCL 430.52, but specifically addressed motor vehicles. Under MCL 430.53, it was a misdemeanor to display an emblem or insignia of an organization on a motor vehicle *unless the person was a member*. The only other exceptions: display during a public parade, fair, exhibit, or carnival.

Many officers have confused MCL 430.52 and MCL 430.53. Courts have not invalidated MCL 430.52 so it may still be enforced. However, MCL 430.53 should not be enforced until amended by the legislature, even though the invalid version is still "on the books".
