MICHIGAN STATE POLICE

LEGAL UPDATE

JANUARY 2007

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.

MCLs 760.1g & 760.15g

LEIN checks to determine parole status of suspects now required

Effective December 28, 2006 (PA 543) and January 10, 2007 (PA 668)

Public Acts 543 and 668 of 2006 require that LEIN checks be conducted to determine whether a person is on parole when police make an arrest or prior to seeking an arrest warrant. When an arrestee or a person for whom a warrant has been issued is found to be on parole, police must "promptly" notify the Department of Corrections (DOC) of the following:

- The identity of the person arrested or named in the warrant
- The fact that the LEIN check indicates the person is a parolee
- The charges for which the person was arrested or the charges in the warrant

Notice to the DOC may be accomplished by telephone or electronically to one of the following:

- A parole agent serving in the county where the arrest was made or the warrant was issued
- The supervisor of the parole office serving the county of arrest of warrant issuance
- The DOC's 24-hour phone line listed in the LEIN return indicating the person is on parole

In cases where a judge or magistrate issues an arrest warrant for a parolee, but the court delays entry of the warrant into LEIN pending appearance of the parolee, it becomes the responsibility of the court to make the required notification.

Public Act 543 of 2006

Public Act 668 of 2006

MCL 257.625

OWI is now a felony when a person has been convicted of three offenses during their lifetime

Effective January 3, 2007

Public Act 564 of 2006 makes third offenses of violations listed in MCL 257.625(25) felonies when the person has two or more previous convictions at any time during their life. The previous statute required three within 10 years. The new lifetime time frame also applies to convictions for "child endangerment" under MCL 257.625(7).

A companion to PA 564 will require the Secretary of State to maintain alcohol-related conviction records for the life of a driver (PA 565 of 2006).

Public Act 564 of 2006

MCLs 750.50c & 750.81d

Search and rescue canine teams now receive the same protections as police canine teams
Effective December 29, 2006

Public Act 517 of 2006 adds search and rescue dogs and handlers to the list of protected teams. The affected statutes make it illegal to physically harm, harass, or interfere with the animals or their handlers.

Public Act 517 of 2006

MCL 257.601a

Police may contract with owners of private roads for the enforcement of the Vehicle Code on those roads
Effective December 29, 2006

Public Act 549 of 2006 amends the vehicle code to allow cities, townships, and villages to contract with the owners of private roads for the enforcement of the vehicle code. Once such a contract has been executed, police may enforce the vehicle code on those roads once proper signs have been posted (the cost of those signs must be borne by the owner of the road).

Public Act 549 of 2006

Meth lab sites listed on the Internet
Effective January 1, 2007

As part of the Methamphetamine-related laws that became effective in 2006 (see the September Update), Public Act 255 of 2006 requires that information concerning meth labs reported by law enforcement be made available through the Department of Community Health (MDCH) web site.

The MDCH's Methamphetamine Resource Site now contains that information.

Public Act 255 of 2006

MCL 436.1701

Military identification now approved for use as proof of age in alcohol purchases
Effective January 10, 2007

Public Act 682 of 2006 amends the Liquor Control Code to allow military ID as proof of age in making alcohol purchases. Military IDs replace the Federal Selective Service card on the list of approved identifications.

Public Act 682 of 2006

MCL 800.283a

It is now illegal to furnish a cellular phone to a prisoner in a correctional facility
Effective December 29, 2006

Public Act 540 of 2006 amends the list of items prohibited in a correctional facility to include cell phones. The Act makes it a five-year felony to sell, give, or furnish a prisoner with a cell phone; to aid a prisoner in obtaining a cell phone; or to dispose of a cell phone on the grounds of a correctional facility.

Public Act 540 of 2006

MCL 750.197c

Assaults upon corrections officers and attempts to escape are now five-year felonies; definition of "places of confinement" expanded
Effective December 29, 2006

Public Act 535 of 2006 changes the definition of a "place of confinement" to include DOC facilities, local correctional facilities, and correctional facilities operated by a private vendor. Escapes, escape attempts, and assaults upon officers of those facilities are now five-year felonies (the punishment was previously unspecified).

Public Act 535 of 2006

SEARCH & SEIZURE

Full citations have been omitted.

Invoking *Miranda* rights does not negate a co-tenant's consent to enter the suspect's residence absent an express denial of consent by the suspect

In *People v. Lapworth*, officers investigating an arson went to the suspect's house and advised him of his *Miranda* rights before interviewing him. The suspect invoked his rights and the officers arrested him and placed him in a patrol car. One of the officers then asked the suspect's roommate if the officer could enter the house to use the phone, and the roommate agreed. Once inside, the officer observed evidence which he eventually seized pursuant to a search warrant.

The suspect essentially claimed that his invocation of his *Miranda* rights served as a denial of consent to enter the residence. The Michigan Court of Appeals disagreed, holding that "mere invocation of the right to counsel . . . does not constitute an express objection to a consensual entry into the premises." The Court further noted that where valid consent to enter is obtained from a suspect's cotenant "police are under no obligation to seek out consent from the absent suspect."

The Court did warn that an express objection to entry by the suspect may have rendered the evidence inadmissible. The Court also noted that police may not remove a suspect for "the express purpose of preventing the suspect from having an opportunity to object."

Exigent circumstances may exist in a suspected meth lab

In *United States v. Atchley*, officers were dispatched to investigate an anonymous report of a meth lab in a hotel room. After arresting the suspect for assaulting officers, the officers looked into the open door of the hotel room and observed a gun laying on a bed. The officers entered and conducted a protective sweep of the room. After smelling chemicals and seeing glass jars in the room, officers searched the inside of a refrigerator, ice chest, drawer, and ammunition can, finding more evidence.

Among the issues addressed by the 6th Circuit Court of Appeals was whether the warrantless search of the hotel room was justified beyond the initial protective sweep.

The Court held that the search was justified under the exigent circumstances exception to the search warrant rule because the tip and evidence observed in plain view led the officers to have the objectively reasonable belief that meth was being manufactured in the room.

While finding evidence of other drugs would not "validate a warrantless search," the Court held that the dangers associated with making meth and storing related chemicals created exigent circumstances justifying such a search in order to protect officers and the public.

INTERVIEW & INTERROGATION

Full citations have been omitted.

Public safety exception to the *Miranda* requirement

In *United States v. Williams*, police went to the defendant's room at a boarding house in order to arrest him on outstanding arrest warrants for rape and robbery. When the suspect answered the door, officers observed that he didn't look like a police photo so they asked him for identification. When the suspect turned to get ID, officers ordered him to stop and asked whether he was alone and whether he had a weapon. The suspect responded that he had a weapon under his mattress (which was a sawed off shotgun).

The United States 6th Circuit Court of Appeals addressed a number of issues in their opinion. Here we will describe their discussion of the public safety exception to the *Miranda* requirement (the suspect claimed he should have been advised of his rights before being asked about the existence of a weapon).

Continued next page…

Miranda exception, continued

Under the public safety exception (originally established by the U.S. Supreme Court in *New York v. Quarles*), police may ask questions without providing *Miranda* warnings when they ask questions designed to ensure their safety or the safety of others. The exception does not apply when questions are asked solely to produce evidence. The exception applies "when officers have a reasonable belief based on articulable facts that they are in danger." Courts will evaluate reasonableness based on objective facts rather than an officer's subjective view of the facts. In the present case, the Court allowed the use of the shotgun as evidence because the suspect's access to it presented a danger to the officers.

For an officer to have a reasonable belief that he or she is in danger, there must minimally be a reason to believe that:

1. The suspect might have (or recently had) a weapon, and
2. Someone other than police might gain access to the weapon and inflict harm with it

Objective facts that Courts will consider include:

1. Known history and characteristics of the suspect
2. Known facts and circumstances of the alleged crime
3. Facts and circumstances confronted by the officer when making the arrest

The Court noted that the exception might not apply when used as a pretext.

When officers ask a suspect about the presence of weapons and find a weapon as a result, they should ensure that they document the factors that led them to believe such questioning was necessary to protect themselves or others.

EDITOR'S NOTE…

If you receive the update in printed form, and wish to access the information for which we provide internet links, you may do so by visiting our web site and clicking on the links in the Updates posted on the internet.

1. Go to **www.michigan.gov/msp**
2. Click on '**Legal Resources for Police Officers**' (in the light blue box on the right side of the page)
3. Click on '**MSP Legal Updates**' (middle of the page)

DID YOU KNOW?

Note: The following material does not represent new law. Instead, it is intended to inform officers of infrequently used laws which might prove useful.

The authority for police to conduct a vehicle inspection is found in the Vehicle Code

Many police officers conduct inspections of vehicle equipment during traffic stops. Often they assume that such inspections may be made pursuant to authority inherent in an officer's general authority to enforce traffic law. However, inspection authority is actually contained in MCL 257.715. That statute authorizes police to conduct traffic stops based upon vehicle defects and to inspect vehicles to ensure that all equipment is maintained in accordance with the Vehicle Code.

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 trickery or deception during an interrogation is generally allowed

Under current Michigan and federal law deception, trick, or fraud will not alone render a confession inadmissible. The Michigan Supreme Court has held that the test is whether the trick would tend to induce a false statement from the suspect (*People v. Dunnigan*).

Continued next page…

Back to Basics, continued

While that test is vague, several cases have shed light on the types of tricks that will be allowed.

The U.S. Supreme Court has held that telling a suspect that his co-conspirator had confessed would not render a statement inadmissible, even when no such confession had been made (*Frasier v. Cupp*).

The Michigan Court of Appeals has held that telling a defendant that his fingerprints were found at the scene of a crime would not render a statement involuntary, even when no prints were found (*People v. Hicks*).

The 6th Circuit Court of Appeals has approved the practice of showing fictitious evidence such as phony charts and photographs (*Ledbetter v. Edwards*).

While deception, trick, and fraud may be allowed during an interrogation, it is important to remember that the U.S. Supreme Court has held that a defendant is entitled to have a jury hear the circumstances of a confession, including the use of tricks by police (*Crane v. Kentucky*).

SUBSCRIPTIONS

Officers from any agency are welcome to subscribe to receive the Update via e-mail, 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