



# MICHIGAN STATE POLICE LEGAL UPDATE

**No. 118**  
October 30, 2015

**Subscriptions:** To receive the Update via email, go to [michigan.gov/msp-legal](http://michigan.gov/msp-legal) and click on "subscribe to legal updates."

## CRIMINAL LAW AND PROCEDURE MANUAL

The third edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

The manual is published by [Kendall Hunt Publishing Co.](http://Kendall Hunt Publishing Co.) Copies may be [ordered online](#) or by calling Kendall Hunt Customer Service at (800) 228-0810.

## CRIMINAL LAW

### ***Resisting and obstructing statute does not apply to reserve police officers***

In [People v. Feeley](#), police officers arrested Feeley for resisting and obstructing a police officer in violation of [MCL 750.81d](#), for failing to comply with the command of a reserve police officer.

At the conclusion of the preliminary examination hearing the district court denied the prosecution's bindover request on the grounds that failure to comply with the command of a reserve police officer was not within the scope of the statute. The prosecution appealed.

The Michigan Court of Appeals, in a 2-1 decision, affirmed the decision of the district court. While recognizing that reasonable policy arguments may support the view that failing to obey the commands of a reserve police officer should result in some level of criminal liability, the Court noted that the decision whether to criminalize such actions and to define such punishment is a matter reserved for the legislature. The Court held that "if the legislature had intended 'police officer' as used in the statute to be read so broadly, it would not have needed to include a lengthy list of law enforcement professionals (and firefighters, etc.) to whom the law applies, notably omitting reserve police officers."

### ***The inoperability of a pistol is no longer a valid affirmative defense to a charge of carrying a concealed weapon (CCW)***

In [People v. Humphrey](#), police officers arrested Humphrey for CCW when he was found in possession of a concealed pistol following a foot pursuit and subsequent frisk. A forensic laboratory analysis revealed that the recovered pistol was inoperable due to a missing firing pin.

Humphrey moved to dismiss the CCW charge based on a previous court decision which provided an affirmative defense to CCW if it is proven that the pistol could not fire and could not be readily made to fire. The trial court granted Humphrey's motion, and dismissed the CCW charge.

The Michigan Court of Appeals reversed the decision of the trial court and held that the inoperability of a pistol is no longer a valid affirmative defense to a charge of CCW. The Court held that the previous court decision recognizing the affirmative defense of inoperability of a pistol for CCW offenses was overruled by the Michigan Supreme Court's holding in [People v. Peals](#) that the definition of a firearm in MCL 750.222 was "clear" and "plain" and that "the design and construction of the weapon, rather than its state of operability, are relevant in determining whether [the weapon] is a 'firearm.'"

## DID YOU KNOW?

### ***Vehicles manufactured as a golf cart or as an off road vehicle (ORV) cannot be modified and titled as an assembled vehicle for on-road use***

The Michigan Department of State (MDOS) has announced that it will no longer process assembled vehicle title applications for vehicles manufactured as a golf cart or an ORV and has requested law enforcement personnel to refuse or deny any request to complete a [TR-54 Vehicle Number and On-Road Equipment Inspection](#) for such vehicles. Golf carts and ORV's currently titled and registered for on-road use will retain their current title and registration. Additional information may be found on the MDOS [website](#).

Officers are reminded that if a golf cart is not currently titled, registered, and insured for on-road use, and is not being used within one of the cities, villages or townships that has authorized limited use under the circumstances described in [MCL 257.657a](#), it may only be operated on a highway under very limited circumstances if it meets the definition of an ORV as provided in [MCL 324.81101](#) of the Natural Resources and Environmental Protection Act. The limited circumstances, such as crossing a street or highway at a right angle for the purpose of getting from one area to another, can be found in [MCL 324.81122](#).

Additionally, [MCL 324.81131](#) authorizes local municipalities to pass an ordinance allowing the operation of ORV's on streets within the municipality and sets forth the requirements and restrictions in doing so.

*This update is published by the Michigan State Police, Office of the Director, Legal Resource and Education Unit and is provided for informational purposes only. Officers should contact their local prosecutor for an interpretation before applying the information contained in this update. Questions and comments may be directed to [MSPLegal@michigan.gov](mailto:MSPLegal@michigan.gov). Past editions can be found at [www.michigan.gov/msp-legal](http://www.michigan.gov/msp-legal).*