MICHIGAN STATE POLICE
LEGAL UPDATE

No. 133
September 13, 2018

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### 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.

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## MEDICAL MARIHUANA

***The Michigan Medical Marihuana Act protects a certain amount of "usable marihuana" and "usable marihuana equivalents," but does not protect the possession of any amount of "marihuana" that is not "usable marihuana"***

In *People v. Mansour*, a search of Mansour's basement revealed 126 marihuana plants, about 550 grams of marihuana buds on a "drying rack," and various items commonly used for packaging controlled substances. Among other charges, Mansour was charged with possession with intent to deliver marihuana. After the trial court granted Mansour's motion to allow an expert examination of the weight, usability, and moisture content of the marihuana buds, Mansour filed a motion to dismiss asserting immunity under § 4 of the Michigan Medical Marihuana Act (MMMA), MCL 333.26424, with respect to the marihuana buds.

Mansour argued that under *People v. Manuel* the marihuana was still drying and therefore was not yet "usable marihuana" subject to the quantity limits under § 4. *Manuel* held that marihuana in the process of drying was not usable marihuana because the definition of usable marihuana under MCL 333.26423(n) includes the "*dried* leaves and flowers of the marihuana plant." (Emphasis added.) According to Mansour, she necessarily did not exceed the amount of usable marihuana she was allowed to possess as a qualifying patient because the drying marihuana buds were unusable and thus should not count against the quantity limit under § 4.

On appeal, the Court of Appeals assumed that the marihuana buds were not usable marihuana in light of Mansour's argument. However, the Court explained that while immunity under the MMMA may be lost if the quantity limit of usable marihuana under § 4 is exceeded, the MMMA does not provide any immunity for "marihuana," as that term is generally defined under MCL 333.26423(e), that does not meet the MMMA's definition of usable marihuana. Because Mansour possessed drying marihuana that was not usable marihuana, she was not entitled to immunity, even though Mansour did not exceed the § 4 quantity limit of usable marihuana.

In reaching that conclusion, the Court of Appeals relied on its prior opinion, *People v. Carruthers*, which held that § 4 immunity did not apply to brownies containing THC because they constituted marihuana that did not meet the definition of usable marihuana then in effect.

Following *Carruthers*, Public Act 283 of 2016 amended the MMMA to include "marihuana-infused products," defined under MCL 333.26423(f) as "a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. . . ." Also, the definition of usable marihuana under MCL 333.26423(n) was amended to include "plant resin" and "extract of the marihuana plant." To determine possession quantities, a definition of "usable marihuana equivalent" was established under MCL 333.26423(o) as the "amount of usable marihuana in a marihuana-infused product that is calculated" under § 4. See MCL 333.26424(c). Section 4, as amended, provides a quantity limit of not more than *a combined total* of 2.5 ounces of usable marihuana and usable marihuana equivalents, in addition to any marihuana plants allowed under § 4.

## FIREARMS LAW

***Schools may adopt a policy banning firearms on school property if it does not conflict with state law***

In the consolidated case of *Michigan Gun Owners, Inc v. Ann Arbor Public Schools* and *Michigan Open Carry, Inc v. Clio Area School District*, two school districts adopted policies prohibiting firearms on school property. Each policy contained a narrow exception for concealed pistol license (CPL) holders that permitted CPL holders to carry a concealed pistol on school property under the limited circumstances allowed under MCL 28.425o, but the policies effectively prohibited CPL holders from

openly carrying on school property. Yet it is not generally considered a violation of state law for a CPL holder to openly carry a pistol on school property because there is not a law prohibiting it. Specifically, MCL 750.237a exempts CPL holders from the general prohibition against having a weapon in a weapon-free school zone, and the general prohibition against CPL holders carrying on school property under MCL 28.425o applies to carrying a *concealed* pistol. Lawsuits were filed to determine whether state law preempted the school districts' policies. The school districts filed motions for summary disposition, and the trial courts in both cases reached different conclusions. The Court of Appeals in both cases upheld the school districts' policies.

The Michigan Supreme Court also upheld the policies because, while MCL 123.1102 prohibits a "local unit of government" from enacting an ordinance regulating certain firearms-related conduct, school districts are not listed under the applicable definition of local unit of government. See MCL 123.1101(b). As a result, the Court held that state law does not expressly prohibit the school districts from adopting the policies nor does it show that the Legislature "impliedly occupied the field so as to preclude" the local regulation adopted by the school districts.

Officers are reminded that although permission to enter public places is generally presumed, under MCL 750.552, trespassing on another's property by unlawfully entering a place after being forbidden to do so or unlawfully remaining present after being asked to leave is punishable as a 30-day misdemeanor, and MCL 764.15 authorizes an officer to make a warrantless arrest if there is reasonable cause to believe a misdemeanor is committed on school property, whether or not the violation occurs in the officer's presence.

## VEHICLE CODE

### *Attaching on rear of vehicle a device designed to carry an object on its rear does not violate requirement to place and position registration plate so it is clearly visible and maintain it free from any obstruction*

Under MCL 257.225(2) of the Michigan Vehicle Code, a registration plate must be "in a place and position that is clearly visible" and "maintained free from foreign materials that obscure or partially obscure the registration information and in a clearly legible condition." Legal Update No. 121 discussed the Michigan Supreme Court's holding in *People v. Dunbar* that MCL 257.225(2) requires the registration plate, *and surrounding attachments*, to be configured to ensure the unobstructed visibility of the registration plate. The Court concluded that MCL 257.225(2) was violated where a towing ball attached to a rear truck bumper partially obstructed the officers' view of the registration plate.

Following *Dunbar*, Public Act 147 of 2018 amended MCL 257.225 to state that the "attachment to the rear of a vehicle of a tow ball, bicycle rack, removable hitch, or any other device designed to carry an object on the rear of a vehicle, including the object being carried," does not violate MCL 257.225(2). Officers are reminded that MCL 257.225 includes additional requirements relating to a registration plate. For example, it must be securely fastened in a horizontal position and attached at a height of not less than 12 inches from the ground, measured from the bottom of the plate. MCL 257.225(2). Also, a person shall not obscure or partially obscure registration information by attaching a name plate, insignia, or advertising device to a registration plate or operate a motor vehicle with such a plate. MCL 257.225(4) and (5). A violation of MCL 257.225 is a civil infraction. MCL 257.225(7).

## STATUTES

### *The Code of Criminal Procedure amended to establish certain statute of limitations for armed robbery and second- and third-degree CSC*

Public Act 148 of 2018 amended MCL 767.24(5) to list armed robbery as an offense for which an indictment may be filed within 10 years after the offense is committed. However, if the offense is reported to a police agency within one year after it is committed and the perpetrator's identity is unknown, an indictment may be filed within 10 years after the individual is identified through knowledge of his or her legal name.

Public Act 182 of 2018 added MCL 767.24(4) to establish that an indictment for second-degree criminal sexual conduct, MCL 750.520c, or third-degree criminal sexual conduct, MCL 750.520d, involving a victim under the age of 18 may be filed within 15 years after the offense is committed or by the victim's 28th birthday, whichever is later. If evidence of the offense contains DNA from an unidentified individual, the indictment may be filed at any time; however, after the individual is identified, the indictment must be filed within 15 years after the identification or by the victim's 28th birthday, whichever is later. "Identification" means when the individual's legal name is known and the individual has been determined to be the source of the DNA. MCL 767.24(5), as amended by PA 182. Officers should note that an indictment for criminal sexual conduct in the first degree may be filed at any time. MCL 767.24(1).