



February 2016

Michigan.gov/ohsp



Register now for the Michigan Traffic Safety Summit

Be sure to reserve a spot for the 2016 Michigan Traffic Safety Summit before the early registration discount rate of \$85 expires February 26. After that, registration increases to \$125.

The March 22-24 conference will be at the Kellogg Hotel and Conference Center in East Lansing. Through more than 25 workshops and general sessions, national and state experts will share lessons learned and discuss emerging trends. Presenters will focus on best practices covering the four E's of traffic safety: education, emergency medical services, enforcement, and engineering.

Attendees will develop a greater understanding of the traffic safety challenges facing the state. There will be opportunities to collaborate with public and private sector partners, and leave with the tools, techniques, and connections to take immediate action in their communities.

New this year, participants can help impact the strategic direction of traffic safety planning in Michigan. Guided discussion groups, based on the emphasis areas of the Strategic Highway Safety Plan, will provide input on the state's key traffic safety needs to help achieve significant reductions in traffic fatalities and injuries.

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Farnum retires after more than 22 years with OHSP

Kathy Farnum, OHSP's senior section chief for planning and administration, retired from state government at the end of January, capping more than 22 years of service to the State of Michigan with the OHSP. Kathy was responsible for supervising section staff for Traffic Records, Program Analysis and Evaluation, and Special Projects (teen and senior traffic safety). She played a key role as an advisor to the Michigan Truck Safety Commission and

for her outstanding contributions to highway traffic safety, the state highway safety program, and to the many projects and programs that the OHSP has funded over the last 22 years that have helped to reduce crash fatalities and injuries in our state," said Michael L. Prince, OHSP director. "Kathy has served the agency with the highest level of distinction, professionalism, integrity, and dedication to public service. She should be considered a role



Kathy Farnum (left) is honored by Michael L. Prince, OHSP director, and former OHSP director Betty Mercer.

the Governor's Traffic Safety Advisory Commission on the development of, and updates to, the State Strategic Highway Safety Plan.

"As a national leader in the program planning process, Kathy is recognized

model for all those who desire to work in the field of public service."

While she is retiring from state service, Kathy plans to pursue a new career in hospital chaplaincy and enjoy time with her three grandchildren.



SAFETY Network



Save the date

The Michigan Child Passenger Safety Conference is May 25-26 at the Comfort Inn and Suites Hotel and Conference Center in Mount Pleasant.

Regional Traffic Safety Network prepares for the future

Regional Traffic Safety Committees have provided opportunities to build relationships, share information, enhance communications, and address community traffic safety issues locally and around the state.



To help these committees remain effective, the OHSP and AAA Michigan

met with committee chairs and vice chairs last October to discuss strategies for 2016 and beyond. Based on those discussions, the committees have been rebranded as the Regional Traffic Safety Network.

"We're excited about the network's potential," said Michael L. Prince, OHSP director. "The people involved are among the best and brightest in traffic safety advocacy. Their input and insights will help us save lives, reduce injuries, and develop sound safety efforts for many years to come."

Anyone interested in participating in the network should contact Janet Hengesbach, OHSP, at 517-241-1512 or Hengesbach2@michigan.gov.

Resources available to help aging drivers

If you are concerned about an aging loved one's driving habits or what will happen when it's time to give up the keys, finding help can be challenging.

A coalition is providing some much-needed answers through a new state resource for aging drivers, their families, and the professionals that work with



them. The *Safe Drivers Smart Options: Keys to Lifelong Mobility* website was recently launched to provide information about driving, mobility, and aging.

The website at michigan.gov/aging-driver is a statewide strategy to address the mobility needs of Michigan's aging population. Some of the many resources provided through the website will help:

- Find classes and training specifically for mature drivers.
- Provide resources for families to assist aging drivers in retiring from driving and finding alternate sources of transportation.
- Connect health care professionals, law enforcement personnel, and other professional caregivers that work with older adults to resources to better evaluate the needs and concerns of aging drivers.
- Identify physical and mental health issues that impede driving.
- Develop coping strategies to enhance mobility safely.

Michigan has one of the oldest populations in the country. According to the 2010 census, 14 percent of residents are age 65 or older, and this age group is the fastest growing demographic in the state. Secretary of State records show that for drivers 65 and older, there are currently 1,382,133 Michigan residents with a driver's license compared to 1,049,582 license holders of the same ages in 2005.

Secretary Foxx announces proactive safety principles

U.S. Secretary of Transportation Anthony Foxx recently announced an agreement between the U.S. Department of Transportation and 18 automakers to pursue a collaborative approach to safety.

The strategy is designed to improve the quality of data that automakers and the National Highway Traffic Administration (NHTSA) analyze to identify safety defects before they expand into massive recalls. The joint effort is also focusing on finding ways to generate better data in the future.

"This new approach can help achieve even greater success in the mission we

share: making sure every American driver can get to and from their destination, safely, every time they get in their car," Foxx said.

The plan's main objectives include:

- Boosting and facilitating proactive safety.
- Maximizing safety recall participation rates.
- Exploring ways to mitigate cyber threats that could present unreasonable safety risks.

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Survey shows Michigan's car seat, booster use rates increase

More children are riding in car seats and booster seats in Michigan, according to an observation survey conducted by the Wayne State University Transportation Research Group. Booster seat use is at 49.7 percent for 4- to 7-year-olds, up from 42.4 percent two years ago. For children from birth to 3 years old, 95.7 percent are in car seats, up from 93.6 percent in 2013.

"It's important to build on these increases and raise awareness among even more parents and caregivers," said Michael L. Prince, OHSP director. "Traffic crashes remain a leading cause of death nationwide among children. Car seats, boosters, and seat belts can prevent many of those fatalities and injuries."

While use is up, only a quarter of car seats or boosters for children under age 8 are used correctly. According to the survey, the most common seat-related misuse was the improper positioning of the chest clip. This was observed in nearly 57 percent of rear-facing seats and 47 percent of forward-facing seats. Chest clips should

be positioned at the child's armpit. The most common booster seat misuse was the shoulder belt not being properly positioned over the shoulder and chest of the child.



The survey found that children were least likely to be in the correct car seat or booster if:

- The driver was not buckled up (88.1 percent properly restrained for children from 0-3 and 32.6 percent properly restrained for those ages 4-7).
- The driver was 60 or older (45.9 percent properly restrained for children

ages 4-7 compared to 50.3 percent for drivers ages 16-29).

- Riding in a pickup truck (only 39 percent properly restrained for children ages 4-7).

"Children must be in the correct seat for their size and that seat needs to be installed and used properly," Prince said.

State law requires drivers and passengers 15 years old and younger in any seating position to be buckled up. Children must be properly buckled in a car seat or booster seat until they are 8 years old or 4 feet 9 inches tall.

Michigan has a network of more than 1,000 child passenger safety technicians who assist parents and caregivers with proper installation and use of car seats, boosters, and seat belts. For information on car seats, or to locate the nearest technician, visit cert.safekids.org.

More Michigan schools to take part in teen safe driving program

More than 45,000 students at 44 Michigan high schools will soon benefit from efforts to make teenagers better, safer drivers.

Strive For a Safer Drive (S4SD) is a public-private partnership between Ford Driving Skills for Life (DSFL) and the OHSP that



seeks to reduce traffic crashes, the leading cause of death for teens. In 2014, there were 40,865 crashes in Michigan with a driver age 15-19. Those crashes resulted in 69 fatalities and 479 serious injuries.

As part of the S4SD program, schools receive up to \$1,000 for students to create teen-led traffic safety campaigns to educate their fellow classmates about distracted driving, seat belt use, speeding, underage drinking/impaired driving, or winter driving.

Schools will submit a video or PowerPoint outlining campaign activities. The top five campaigns will be selected and those winning schools will win a cash prize ranging from \$500-\$1,500. Following their activities, schools will have the opportunity to send students to a free hands-on driving clinic with professional driving instructors in the spring. A video about the driving clinic is on the S4SD website, Michigan.gov/s4sd.



Save the date

The Pedestrian and Bicyclist Safety Conference is April 29-30 at the Comfort Inn and Suites Hotel and Conference Center in Mount Pleasant.

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- Enhancing analysis and examination of early warning reporting data.

Foxx said that automakers and the NHTSA are committing to work together to develop a data-driven, science-based process that will advance these objectives.

For more information go to: nhtsa.gov

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Four significant 2015 court cases that impact traffic safety in Michigan

By Kenneth Stecker and Kinga Gorzelewski

The 2015 calendar brought four significant cases that impact traffic safety in Michigan.

Rodriguez v. United States, No. 13-9972, decided April 21, 2015, U.S. Supreme Court:

A police officer pulled over defendant's vehicle for a traffic violation. After obtaining information from defendant and his passenger, the officer wrote defendant a warning ticket and gave them back their documents.

The officer then asked defendant for permission to walk his dog around the vehicle and the defendant declined. The officer instructed defendant to wait for a second officer to arrive to the scene. When the second officer arrived approximately seven minutes later, the dog was walked around the car and alerted for drugs.

Defendant was subsequently indicted for possession with intent to distribute 50 grams or more of methamphetamine. He moved to suppress the evidence arguing that the officer had prolonged the traffic stop without reasonable suspicion.

The U.S. Supreme Court agreed with the defendant. The Court held as follows:

"We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation."

The case was remanded back to the 8th Circuit Court of Appeals to decide the issue of whether reasonable suspicion existed to validate the prolonged detention.

This case is important because of what the Court noted in its decision.

First, the Court stated that in *Illinois v. Cabellas*, 543 U.S. 405 (2005), the U.S.

Supreme Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment. Certain unrelated investigations such as speaking with a passenger or having a K-9 walk around the vehicle, while an officer is writing the ticket is legal under the Fourth Amendment. "The seizure remains lawful only so long as [unrelated] inquiries do not measurably extend the duration of the stop."

Second, the Court noted that a dog sniff is not an "ordinary incident of a traffic stop." The majority emphasized that the question for Fourth Amendment purposes "is not whether the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff prolongs –i.e., adds time to the stop."

Therefore, it seems permissible for a K-9 officer to conduct a dog sniff while another officer attends to the purpose of the motor vehicle stop, as long as the dog sniff does not lengthen the duration of the stop.

Mullenix v. Luna, No. 14-1143, decided November 9, 2015, U.S. Supreme Court:

In this 42 USC 1983 action, officers began to chase the plaintiff when he was contacted in his car concerning an arrest warrant. The plaintiff commenced a high-speed chase that continued for approximately 18 minutes at speeds between 85 and 110 miles per hour. Twice during the chase the plaintiff called police dispatch to say he had a gun and threatened to shoot police if they did not stop their pursuit. Tire spikes were set beneath an overpass. Officer Mullenix decided to shoot at the car to disable it. Mullenix communicated his plan. One officer responded 10-4, a supervisor indicated to stand-by, and stated "see if the spikes work," which Mullenix may or may not have heard.

Mullenix fired several shots at the vehicle. The car hit the spikes and flipped. It was determined that plaintiff died from

the shots, not the crash. In court, Mullenix moved for summary judgment on the ground of qualified immunity—the motion was denied by the trial court and affirmed by the Court of Appeals. The Supreme Court reversed.

The Court held that the appropriate question was whether clearly established law concerning an officer's conduct was excessive force where the person is avoiding capture through vehicular flight when innocent persons in the area are at risk from the flight.

The opinion asks whether it was reasonable to kill the suspect. Qualified immunity shields officials from civil liability as long as the official's conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. To determine the issue, the Court looked to whether the act was unreasonable in circumstances beyond debate.

The Court held that in this situation the officer was not plainly incompetent nor did he knowingly violate the law. Therefore, the officer should be granted qualified immunity.

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People v. Bergman, No. 320975, decided September 29, 2015, Michigan Court of Appeals:

The defendant argued that the trial court erred in excluding evidence that the victim driver had alcohol and controlled substances in his system. The defense's basis for admission of this evidence was that it would establish that the victim himself was negligent and that defendant did not have the requisite level of intent for a second-degree murder charge.

The Court of Appeals rejected both arguments. First, the Court held that there was no evidence that the victim did anything to contribute to the crash such that he was negligent or grossly negligent and thus an intervening cause of the crash. Evidence at trial established that the victim's truck was properly driving in its own lane when defendant's truck crossed the center line and struck victim's truck head on. The Court contrasted these facts from those in *People v. Feezel*, 486 Mich 184 (2010), where the heavily intoxicated victim was walking in the middle of an unlit road with his back to oncoming traffic on a dark rainy night.

Second, the Court of Appeals also held that evidence that the victim had alcohol and controlled substances in his system is irrelevant to the issue of defendant's intent in a second-degree murder case. The Court held that the facts in this case were sufficient to show that defendant committed an act that was in obvious disregard of life-endangering consequences and that victim's state of intoxication was irrelevant to her knowledge of her own susceptibility of hazardous driving.

The defendant also argued on appeal that the trial court erred in admitting evidence of seven prior incidents where she had driven erratically, was passed out in her vehicle, or struck another vehicle while impaired or under the influence of prescription drugs. These incidents were admitted as prior acts under MRE 404(b)(1). The Court noted, "The prior acts evidence

here involved incidents in which defendant either drove unsafely, was passed out in her vehicle, or was involved in an accident while impaired or under the influence of prescription substances, or was in possession of pills, such as Vicodin and Soma."

This evidence was properly admitted to show defendant's knowledge and absence of mistake, and was relevant to the malice element for second-degree murder because it was probative of defendant's knowledge of her inability to drive safely after consuming prescription substances. And, because the prior incidents were minor in comparison to charged offense involving a head-on collision that caused the deaths of two individuals, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under MRE 403. Lastly, the trial court gave an appropriate cautionary instruction to reduce any potential for prejudice.

The Court of Appeals rejected this argument and held that the prior acts were properly admitted to show defendant's knowledge and absence of mistake. The Court also held that the prior acts were relevant to the malice element for second-degree murder because it was probative of defendant's knowledge of her inability to drive safely after consuming prescription drugs.

People v. Carlton, No. 321630, decided November 24, 2015, Michigan Court of Appeals:

The defendant went to the Soaring Eagle Casino and parked his car in the casino parking lot. Security personnel saw Carlton smoking what they believed to be marijuana inside his car. The security personnel called police officers and the officers went to the parking lot to investigate. Carlton admitted to the officers that he had been smoking marijuana and the officers saw a marijuana roach on the car's dashboard. The officers searched the car and found four bags of marijuana in a styrofoam cooler that was on the floor board

of the front passenger's seat. Carlton was the only person in the car at the time.

The issue was whether the immunity and defenses under MCL 333.26424 and 333.26428 of the Michigan Medical Marihuana Act (MMMA) apply to a person who smokes marijuana in his or her own car while that car is parked in the parking lot of a private business that is open to the general public. The prosecution relied on MCL 333.26427(b)(3) (B) which specifically reads that the MMMA does not "permit any person to smoke marijuana in any other place." Therefore, the defendant is not entitled to immunity because the defendant was smoking in a public place which is prohibited under MCL 333.26427(b)(3)(B).

The Court of Appeals agreed with the prosecution. The Court held, "Because Carlton was smoking marijuana in a 'public place,' MCL 33.26427(b)(3)(B), he could not assert the immunity or defense provided under that act."

The Court reasoned, "Because the electors chose to define the exception by reference to the character of the place rather than by the specifics attending the act, whether members of the general public might stumble upon the patient smoking the medical marijuana, or otherwise detect the patient's smoking, is not relevant to determining whether the exception applies."

The Court further stated, "For similar reasons, the fact that a public place was intended to be used in private does not alter the public character of that place. A person who goes into a restroom that is generally open to the public, enters a stall, and closes the door, does not thereby transform the stall from a public place to a private place."

Stated another way, even if a patient successfully conceals his or her smoking of medical marijuana from detection, the patient will not be entitled to the protections of the act if he or she smoked the marijuana in a public place. The relevant

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March mobilization coming soon



In just a few weeks, law enforcement agencies around the state will focus on apprehending impaired drivers during a three-week *Drive Sober or Get Pulled Over* crackdown that runs from March 16 to April 4. The period of stepped up enforcement will start the day before St. Patrick's Day and run throughout the college basketball playoffs.

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Guest speakers include John Truscott, former gubernatorial press secretary and president of the Truscott Rossman public relations firm, and District Court Judge Linda Davis, who played a crucial role in the success of Families Against Narcotics.

To register, go to Mi.train.org. For more information, visit Michigan.gov/ohsp or follow the Office of Highway Safety Planning (OHSP) on Facebook at [Facebook.com/miohsp](https://www.facebook.com/miohsp).

Updates from the Traffic Crash Reporting Unit regarding UD-10 changes

The three-year project to modernize Michigan's crash database and revise the UD-10 Traffic Crash Report was implemented in January 2016. Electronic agencies should have received communication from their respective vendor on their rollout implementation plan. The Traffic Crash Reporting Unit (TCRU) has sent communication to paper reporting agencies and sent a supply of UD-10s for 2016.

The new UD-10 Traffic Crash Guide (cheat sheet) was also distributed to every police agency based on the number of Michigan Commission on Law Enforcement Standards certified officers at each department. These laminated guides list all the values for each field on the UD-10. If additional copies of the UD-10 Traffic Crash Guide are needed, please contact the TCRU at 517-241-1699 or by emailing CrashTCRS@michigan.gov.

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inquiry is whether the place at issue is generally open to use by the public without reference to a patient's efforts or ability to conceal his or her smoking of marijuana.

For more information on this article and PAAM training programs, contact Kenneth Stecker or Kinga Gorzelewski, Traffic Safety Resource Prosecutors, at (517) 334-6060 or

The new UD-10 Instruction Manual (2016 edition) is now completed and available for download in PDF format at michigan.gov/crash.

The TCRU recently moved. The new address is:

Michigan State Police
Traffic Crash Reporting Unit
7150 Harris Drive
P.O. Box 30634
Lansing, MI 48909

Free UD-10 training is always available for any agency that would like an on-site training class held at their work location. Sgt. Scott Carlson with the TCRU can customize a UD-10 training class for your department that utilizes local crash data along with a review of agency specific data concerns. Sergeant Carlson can be reached at 517-745-8794 or CarlsonS1@michigan.gov.

e-mail at steckerk@michigan.gov or gorzelewskik@Michigan.gov. Please consult your prosecutor before adopting practices suggested by reports in this article. Discuss your practices that relate to this article with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practice.

What's Ahead

MARCH

- 8 **Pedestrian and Bicycle Safety Action Team meeting.** MSP Headquarters, 333 S. Grand Ave., Lansing, 9 a.m.
- 9 **Michigan Truck Safety Commission meeting.** Michigan Center for Truck Safety, 1131 Centennial Way, Lansing, 9 a.m.
- 10 **Senior Mobility and Safety Action Team meeting.** Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 1:30 p.m.

22-24 Michigan Traffic Safety Summit.

Kellogg Hotel and Conference Center, 219 S. Harrison Road, East Lansing.

APRIL

- 12 **Occupant Protection Action Team meeting.** MSP Headquarters (1920s Room), 333 S. Grand Ave. Lansing, 10 a.m.
- 19 **Traffic Safety Engineering Action Team meeting.** Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 9 a.m.
- 20 **Impaired Driving Action Team meeting.** 10 a.m. Location TBD.

22 **Traffic Incident Management Action Team meeting.**

Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 1:30 p.m.

26 **Distacted Driving Action Team meeting.**

1 p.m. Horatio S. Earle Learning Center, 7575 Crowner Drive, Dimondale, 1:30 p.m.

29-30 **Pedestrian and Bicyclist Safety Conference.**

Comfort Inn and Suites Hotel and Conference Center, 2424 S. Mission Street, Mount Pleasant.

SAFETY Network

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