



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
(517) 322-6704



As of July 15, 2002 resisting and obstructing charges against officers as well as assault upon officers should be written under the new section of MCL 750.81d. The following is a copy of the new law that now makes the offense a felony.

An individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than two years or a fine of not more than \$2,000.00, or both.

- If the offense causes injury requiring medical attention or medical care to that person, the offender is guilty of a four year felony.
- If the offense causes a serious impairment of a body function to that person, the offender is guilty of a 15 year felony.
- If the offense causes death to that person, the offender is guilty of a 20 year felony.

This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

As used in this section:

"Obstruct" includes the use or threatened use of physical interference or force or a knowing failure to comply with a lawful command.

"Person" means any of the following:

- A police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police.
- A police officer of a junior college, college, or university who is authorized by the governing

board to enforce state law and the rules and ordinances of that college.

- A conservation officer of the department of natural resources or the department of environmental quality.
- A conservation officer of the United States department of the interior.
- A sheriff or deputy sheriff.
- A constable.
- A peace officer of a duly authorized police agency of the United States, including, but not limited to, an agent of the secret service or department of justice.
- A firefighter.
- Any emergency medical service personnel described in section 20950 of the public health code, 1978 PA 368, MCL 333.20950.

"Serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

Officers may be required to give "reasonable" assistance in locating witnesses for the defense.

The defendant argued that his case should be dismissed because the prosecutor failed to produce an accomplice/witness. MCL 767.40a states, "The prosecuting attorney or investigative law enforcement agency shall provide to the defendant, or defense counsel, upon request, reasonable assistance, including investigative assistance, as may be necessary to locate and serve process upon a witness." In an analysis of MCL 767.40a, the Michigan Supreme Court held that attempting to locate a witness includes accomplice witnesses. In this case, the prosecutor only informed the defendant that the witness lived in Baltimore, Maryland. The Court remanded the case to determine if this amounted to reasonable assistance. People v Koonce, MSC No. 117527 (Jul 9, 2002).

A Warrant, or Probable Cause and Exigent Circumstances, is needed for forceful entry into a house.

Officers forced their way into a house without a warrant to make an arrest and search after observing several suspected drug deals in the front of the residence. The lower courts held that the entry was valid without determining whether exigent circumstances existed to justify the entry. “The United States Supreme Court reversed by holding that absent exigent circumstances the firm line at the entrance to the house may not reasonably be crossed without a warrant.” The Court remanded the case to the lower courts to assess whether exigent circumstances existed to justify the entry. Kirk v Louisiana, 122 S.Ct. 2458 (2002)

Note: Many questions have arisen as to when officers may force their way into a residence to make an arrest. Statutes and case law allow officers to make forceful entries into residence for the purpose of arrest under the following circumstances: If the officers possess an arrest warrant, they may enter the subject’s residence listed on the warrant when they have reason to believe the subject is inside. Officers may not enter a third party’s house when arresting a subject on a warrant. If the officers do not have a warrant, then officers in Michigan must be entering the residence to arrest for a felony and must articulate exigent circumstances requiring an immediate arrest. For additional information review MCL 764.21, Payton v New York, 100 S.Ct. 1371 (1980), People v Reinhardt, 141 Mich. App. 173 (1985), Steagald v United States, 101 S.Ct. 1642 (1982).

Illegal possession of a controlled substance can be actual or constructive.

“A person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive. Likewise, possession may be found even when the defendant is not the owner of recovered narcotics. Moreover, possession may be joint, with more than one person actually or constructively possessing a controlled substance.”

“To prove possession, it is well established that a person’s presence, by itself, at a location where drugs are found is insufficient. Instead, some additional connection between the defendant and the contraband must be shown.”

In this case, there was strong evidence that supported the inference that defendant was a resident at an apartment where drugs were located during the execution of a search warrant. “Two letters addressed to defendant were found at the residence—one in the mailbox and one (correspondence from a local government agency) in a nightstand in the bedroom. Women’s clothing was found in the bedroom closet. (In the pockets of one of the dresses, officers found 40 packets of heroin.) Additionally, the police found defendant in the parking lot behind the apartment. Viewed in a light most favorable to the prosecution, this evidence permitted as a reasonable inference that defendant resided in the apartment.” People v Hardiman, MSC No. 118670 (June 25, 2002).

The offense of Fleeing and Eluding does not require a certain speed or distance.

An officer attempted to stop defendant’s vehicle for a taillight out. The officer activated his lights and siren. The vehicle initially slowed for some railroad tracks but then accelerated to approximately 40 to 45 mph. The vehicle continued for about twenty seconds and for less than a mile before pulling into a parking area behind a house. The driver exited and ran up to the house and sat on the porch. As the officer approached, the driver stated a subject just ran around the house. The driver was convicted of fleeing and eluding. The Court of Appeals upheld the conviction.

HELD – “M.C.L. § 750.479a reveals no requirement that the defendant’s speeding exceed a certain level or that the speeding occur over a long distance in order for the elements of the statute to be met. Although the foot chase and defendant’s actions after the vehicle pursuit ended could not form the basis of the fleeing and eluding conviction, the actions constituted circumstantial evidence of defendant’s intent to flee and elude the police while he was operating his vehicle.” People v Grayer, C/A No. 229267 (July 26, 2002).