



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
(517) 322-6704



A bail bondsmen can be liable for a false arrest.

Vincent Bright was arrested in Missouri for a drug charge. Vincent identified himself using his brother's social security number and address. Vincent skipped bond and a warrant was issued. Subsequently the brother, Dennis Bright, was arrested by a bounty hunter in Michigan and taken to Missouri where the mistake was discovered. The plaintiff then sued the bounty hunter for false imprisonment. The Michigan Supreme Court upheld the lawsuit.

Under MCL 764.16 a private citizen may make an arrest for a felony that has been committed. "Because it is undisputed that plaintiff had not committed a felony, defendants did not have authority to arrest him." Bright v Ailshie, MSC No. 119111 (April 9, 2002)

An inoperable vehicle is still considered mobile for the automobile exception to a search warrant.

Without a search warrant, an arson investigator searched a vehicle that had been damaged by a fire. The search occurred 12 hours after the fire was extinguished and the investigator had reason to believe it was deliberately set.

Under the automobile exception to the search warrant rule, officers may search a vehicle without a warrant when they have probable cause to believe the vehicle contains contraband or evidence of a crime due to its mobility. "Although the motor of the automobile was inoperable after the fire, the vehicle was capable of mobility. During the time interval between the first and second search, defendant could have moved the automobile by summoning a tow truck. Defendant's automobile could have been hauled to any location while the police were preoccupied in court seeking a search warrant." People v Carter, C/A No. 233493 (March 29, 2002)

Soliciting minor for immoral purposes does not require knowledge of actual age: P.A. 45 of 2002 – MCL 750.145a (June 1, 2002)

A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both. Second offense increased to 10-year felony.

"New" procedures for obtaining search warrants: P.A. 112 of 2002 (April 22, 2002)

MCL 780.654(3) – Affidavits may be suppressed

Upon a showing that it is necessary to protect an ongoing investigation or the privacy or safety of a victim or witness, the magistrate may order that the affidavit be suppressed and not be given to the person whose property was seized or whose premises were searched until that person is charged with a crime or named as a claimant in a civil forfeiture proceeding involving evidence seized as a result of the search.

MCL 780.655 – Affidavits do not have to be left at scene.

(1)The officer is not required to give a copy of the affidavit to that person or to leave a copy of the

affidavit at the place from which the property or thing was taken. (The Criminal Division of the Attorney General's office has taken the position that the better practice is that the affidavit should be served unless a suppression order has been issued.)

(2) The officer shall file the tabulation promptly with the court or magistrate. The tabulation may be suppressed by order of the court until the final disposition of the case unless otherwise ordered. The property and things that were seized shall be safely kept by the officer so long as necessary for the purpose of being produced or used as evidence in any trial.

MCL 780.651 – Information on search warrants kept at court are non public

(8) A search warrant, affidavit, or tabulation contained in any court file or record retention system is nonpublic information.

New statute broadens jurisdiction for criminal prosecution: P.A. 129 of 2002 – MCL 762.2

(1) A person may be prosecuted for a criminal offense he or she commits while he or she is physically located within this state or outside of this state if any of the following circumstances exist:

- He or she commits a criminal offense wholly or partly within this state.
- His or her conduct constitutes an attempt to commit a criminal offense within this state.
- His or her conduct constitutes a conspiracy to commit a criminal offense within this state and an act in furtherance of the conspiracy is committed within this state by the offender, or at his or her instigation, or by another member of the conspiracy.
- A victim of the offense or an employee or agent of a governmental unit posing as a victim resides in this state or is located in this state at the time the criminal offense is committed.
- The criminal offense produces substantial and detrimental effects within this state.

A criminal offense is considered under subsection (1) to be committed partly within this state if any of the following apply:

(a) An act constituting an element of the criminal offense is committed within this state.

(b) The result or consequences of an act constituting an element of the criminal offense occur within this state.

(c) The criminal offense produces consequences that have a materially harmful impact upon the system of government or the community welfare of this state, or results in persons within this state being defrauded or otherwise harmed.

***Age for prostitution lowered from 17 to 16:
P.A. 46 of 2002 – (June 1, 2002)***

Sec 448. A person 16 years of age or older who accosts, solicits, or invites another person in a public place or in or from a building or vehicle, by word, gesture, or any other means, to commit prostitution or to do any other lewd or immoral act, is guilty of a crime punishable as provided in section 451.

Sec. 450. A person 16 years of age or older who aids, assists, or abets another person to commit or offer to commit an act prohibited under section 448 or 449 is guilty of a crime punishable as provided in section 451.

Sec. 462. A person who, for a purpose other than prostitution, takes or conveys to, or employs, receives, detains, or allows a person 16 years of age or less to remain in, a house of prostitution, house of ill-fame, bawdy-house, house of assignation, or any house or place for the resort of prostitutes or other disorderly persons is guilty of a crime punishable as provided in section 451.

***Increased penalties for prostitution:
P.A. 44 of 2002 – (June 1, 2002)***

Sec. 451. (1) Except as otherwise provided in this section, a person convicted of violating section 448, 449, 449a, 450, or 462 is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

- Second offense = misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.
- Third offense = felony punishable by imprisonment for not more than 2 years, or a fine of not more than \$2,000.00, or both.