



MICHIGAN STATE POLICE LEGAL UPDATE

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VEHICLE CODE

Persons under the age of 21 may be prosecuted for operating a motor vehicle with the presence of marihuana in their system.

In *People v Perry*, Perry was driving her car when she was involved in an accident. Officers detected the odor of burnt marihuana emanating from her vehicle. Perry, who was 18 years old at the time, admitted she had been smoking marihuana. Suspecting Perry had been operating her car under the influence of drugs, the officers requested she submit to a blood draw and Perry agreed. A subsequent blood draw produced a test result that was positive for active tetrahydrocannabinol (THC), reflecting 4 nanograms of THC per milliliter of blood. Perry was charged under [MCL 257.625\(8\)](#) for operating a motor vehicle with the presence of "any amount" of a schedule 1 controlled substance (i.e., marihuana) in her system.

Perry moved to dismiss the charge arguing the [Michigan Regulation and Taxation of Marihuana Act \(MRTMA\)](#) barred any criminal prosecution against her for a violation of [MCL 257.625\(8\)](#), and that at most, she could only be responsible for the civil infraction under [MCL 333.27965\(3\)\(a\)\(2\)](#) of the MRTMA. The district court denied the motion, the circuit court affirmed, and the Court of Appeals granted Perry's application for leave to appeal.

The Court of Appeals affirmed the district court and held the MRTMA civil infraction penalty for persons under 21 years of age who possess not more than 2.5 ounces of marihuana or cultivate not more than 12 marihuana plants is not applicable if the person is engaged in an act under [MCL 333.27954\(1\) \(a\), \(d\) or \(g\)](#). Consequently, the Court held that persons under the age of 21 remain subject to criminal penalties for being under the influence of marihuana while driving, for consuming marihuana while operating a vehicle, or in the case of Perry, for operating a motor vehicle with the presence of "any amount" of marihuana in their system in violation of [MCL 257.625\(8\)](#).

Officers are reminded that persons 21 years of age or older may not be prosecuted under [MCL 257.625\(8\)](#) solely for having the presence of "any amount" of marihuana in their system while operating a vehicle unless the evidence shows the marihuana had "some effect" on the person (i.e., impairment or intoxication). Because local prosecutors may choose to exercise discretion by not charging persons under the age of 21 solely for operating with "any amount" of marihuana in their system, officers should continue to investigate and document evidence of impairment or intoxication in all such investigations.

CRIMINAL LAW

Ethnic intimidation based on gender includes harassing or intimidating another person because of the actual or perceived gender of that person.

In *People v Rogers*, Rogers confronted complainant in a gas station and began talking to her using derogatory terms. Complainant identified herself as transgender (assigned male at birth but identifying as a woman) and described Rogers asking about her sex organs and asking to see "it." Despite attempting to ignore him, Rogers continued to make derogatory remarks described by complainant as "gay" in nature which included calling her a "man" and asking to see her penis. Rogers then pulled out a gun and threatened to kill her. Fearing for her life, complainant grabbed Rogers' arm to reach for the gun and was shot in the shoulder during the subsequent struggle.

Rogers moved to quash the district court bind over on the charge of ethnic intimidation contrary to [MCL 750.147b](#). Rogers argued the charge did not apply to situations involving transgender people, and even if it did, the prosecution failed to demonstrate Rogers maliciously "caused" physical contact with complainant based on gender because it was the complainant who initiated physical contact with Rogers by grabbing his arm first. The trial court granted Rogers' motion to quash.

On appeal, the Court of Appeals eventually held that ethnic intimidation occurs if a defendant intimidates or harasses someone "because of" that individual's gender, regardless of whether defendant's perception of gender was right, wrong, or mistaken at the time. The Court determined it did not need to decide if the term "gender" in [MCL 750.147b](#) was intended to include the term "transgender" because under its plain reading, conduct falls within the ethnic intimidation statute whenever gender was the impetus for the intimidating or harassing behavior. Since the alleged impetus for Rogers' conduct was his belief complainant was male, his actions were gender-based within the "traditional" understanding of that term.

After noting the statute does not require defendant be the one who "initiates" the physical contact but only the one who "causes" the physical contact, the Court also held that Rogers' alleged conduct which placed the complainant in fear for her life and prompted her to struggle for the gun provided the probable cause necessary for the district court to believe Rogers "caused" the physical contact with the complainant when binding the case over. The Court reversed the trial court, reinstated the ethnic intimidation charge, and remanded the case to the trial court.