



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
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OUIL/.08 legislation - Public Act 61 of 2003 (Effective: 9/30/2003).

On September 30th Michigan's drunk driving law changes. The changes for Michigan police officers will be minimal. We will still have the three drunk driving charges of OUIL, UBAC(UBAL), and impaired. The major change is that UBAC will now be .08 and not .10. There will no longer be UBAC levels associated with impaired driving.

MCL 257.625 (1) will now read the following:

A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "**operating while intoxicated**" means either of the following applies:

- The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- The person has an alcohol content of **0.08 grams or more** per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Impaired driving under 257.625 (3) will still read as follows:

A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of

alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is **visibly impaired**.

"Under the influence" and "visibly impaired" will still maintain the same definitions. "Under the influence" means that because of drinking alcohol, the defendant's ability to operate a motor vehicle in a normal manner was **substantially lessened**. (CJI2d.15.3) "Visibly impaired" means the prosecutor must prove beyond a reasonable doubt that, due to the drinking of alcohol, the defendant drove with **less ability** than would an ordinary careful driver. (CJI2d 15.4)

New section creates zero tolerance for certain controlled substances. MCL 257.625(8).

A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body **any amount of a controlled substance** listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

Common controlled substances that fall under these sections include marijuana, ecstasy, PCP and cocaine. The MSP lab requests that **blood tests** be sought for driving violations where the arresting officer is seeking the presence of controlled substances.

Another change will occur if the driver refuses to take a requested test. SOS will suspend a license for one year for a refusal. (Previously the suspension was for six months.) For a second refusal the suspension is two years.

Misconduct in office, a felony charge, applies when a police officer acts with "corrupt purpose."

A police chief had a copy of a sergeant's promotional exam in his office. The defendant in this case was an officer who had access to the chief's office and obtained the copy prior to taking the exam. The defendant took the sergeant's exam and scored 191 out of 200 when the test was designed for a top score of 150. It was determined that the test was compromised and was invalidated. The cost of offering the exam was \$250,000, which did not include the officer's salaries. The defendant was charged and convicted with misconduct in office for his actions.

HELD – "Defendant violated the duties of his office because he had a continuing duty not to possess the test materials in advance of the examination, to immediately report to his superior that he had obtained an advance copy of the examination questions, to report anyone who provided unauthorized access to test materials, to avoid conduct unbecoming an officer – such as unauthorized possession of an advance copy of the examination, and to withdraw from the examination after having obtained advance review of the test questions. These actions, and failures to act, constituted acts of malfeasance and misfeasance that violated the duties of defendant's office. *'It is corrupt for an officer purposely to violate the duties of his office.'* The facts and circumstances do not support the allegation that defendant's possession was innocent, inadvertent, and promptly returned. Rather, the score on the examination and the time frame in which it was completed indicate that the examination was reviewed and studied by defendant at the expense of all other applicants seeking promotions whose scores were invalidated. Therefore, the trial court correctly ruled that defendant acted with a

"corrupt purpose" when he made deliberate and knowing use of the advance copies of the test to assist him in taking the sergeant's examination and thereby improperly obtain a promotion." People v Hardrick, C/A No. 238147 (August 26, 2003).

Uttering and publishing may include a copy of a document.

After trying to ascertain her status as a licensed R.N., defendant's employer required her to immediately submit her nursing license. Defendant left and returned with a license, which she had copied and presented the copy to her employer. The word "VOID" appeared on the sides of the documents. At the preliminary examination, the State produced evidence that licensure cards have color-coding so that if they are photocopied, the license will state "VOID." The defendant was not licensed and was charged with uttering and publishing. The question presented was whether a copy of a forged, counterfeited, or altered license constitutes a forged instrument within the meaning of the uttering and publishing statute.

HELD - "The language of MCL 750.249 does not distinguish between a copy of and an original false, forged, altered or counterfeit record, deed, or instrument. The clear intent of the statute is to preclude individuals from using a false, forged, alerted or counterfeit record, deed or instrument to injure or defraud. It is therefore immaterial whether the instrument relied upon by the injured party is an original or a copy. One commits the crime by uttering or publishing a false, forged, altered or counterfeit record, deed or instrument, whether it is an original or a copy. Even though the copy of defendant's alleged license is marked 'VOID,' it appears from the record before us that defendant offered it as proof that she possessed a valid nursing license. Once defendant offered the copy as evidence of a nursing license, the crime was complete." People v Cassadime, C/A No. 247967 September 09, 2003.