



LEGAL UPDATE

MICHIGAN STATE POLICE TRAINING DIVISION

Legal Training Section
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Simple assault and battery becomes a 93 day misdemeanor – P.A. 189 of 2001 (effective April 1, 2002).

A person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, 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.

Domestic Relationships includes dating relationships – P.A. 190 of 2001 (effective April 1, 2002).

An individual who assaults or assaults and batters his or her spouse or former spouse, **an individual with whom he or she has or has had a dating relationship**, an individual with whom he or she has had a child in common, or a resident or former resident of his or her household, 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.

Definition of Dating Relationship

Dating relationship means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

Person arrested for domestic violence must be held until arraigned. P.A. 2001 of 198 (April 1, 2002)

A person arrested for domestic violence shall not be released on an interim bond, **but shall be held until he or she can be arraigned or have interim bond set by a judge or district court magistrate if either of the following applies:**

- The person is arrested **without a warrant** under MCL 764.15a.
- The person is arrested **with a warrant** for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to

section 81 of that act and the person is a spouse or former spouse of the victim of the violation, **has or has had a dating relationship with the victim** of the violation, has had a child in common with the victim of the violation, or is a person who resides or has resided in the same household as the victim of the violation.

Officers may arrest for violations of personal protection orders issued from other states, Indian tribes or United States Territory – P.A. 197 of 2001 (effective April 1, 2002).

A peace officer, without a warrant, may arrest and take into custody an individual when the peace officer has or receives positive information that:

A personal protection order has been issued under section 2950 or 2950a, or is a **valid foreign protection order**. Foreign protection order means an injunction or other order issued by a court of another state, Indian tribe, or United States territory for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person.

It is not entrapment where the police do nothing more than present the defendant with the opportunity to commit the crime of which he was convicted.

Two subjects, Kent Sexton and Frank Slavik, were arrested for armed robbery after police received information against them from a third person. The two were subsequently released on bond and got together to discuss their case. Sexton stated to Slavik that they would have a lot better chance at trial if the key witness did not testify. He also stated that he knew a subject that would kill the witness before trial. After the discussion Mr. Slavik informed his lawyer of the plan, who in turned informed the police of the conversation. Officers met with Slavik and placed a recording device on him for a meeting with Sexton and the hit man. During the conversation, the subject described the different ways he was going to try to kill the witness. Sexton was

subsequently charged with solicitation to murder, conspiracy to murder, conspiracy to obstruct justice and common law obstruction of justice.

Sexton first argued entrapment. The Court of Appeals disagreed. "Entrapment occurs if (1) the police engage in impermissible conduct that would induce an otherwise law-abiding person to commit a crime in similar circumstances, or (2) the police engage in conduct so reprehensible that it cannot be tolerated by the court. Entrapment will not be found where the police do nothing more than present the defendant with the opportunity to commit the crime of which he was convicted. We reject defendant's contention that police exerted excessive control over Slavik. First, the Michigan State Police became involved in this case only after Slavik sought guidance from his attorney, his attorney initiated contact with police and Slavik agreed to cooperate with the investigation to prevent Gross's death. No evidence suggests that police controlled Slavik's activities or behavior or that they pressured him into taking part in the investigation." People v Sexton, C/A No. 224917 (March 1, 2002)

Obstruction of Justice charges

The Court of Appeals also upheld charges against the defendant for obstruction.. "Intimidating a witness in judicial proceedings is an indictable offense at common law, associated with the concept of obstructing justice. Obviously, therefore, physically interfering with the witness' ability to testify, especially by murdering the witness, clearly is an offense recognized at common law that constitutes obstruction of justice."

Reasonable suspicion will be based on the totality of the circumstances including the officer's training and experience.

The question presented in this case was whether there was sufficient reasonable suspicion that crime was afoot to justify the stop of the vehicle. "When discussing how reviewing courts should make reasonable-suspicion determinations, we have said repeatedly that they must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing. This process allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person.'"

"Having considered the totality of the circumstances and given due weight to the factual inferences drawn by the

law enforcement officer and District Court Judge, we hold that the officer had reasonable suspicion to believe that respondent was engaged in illegal activity. It was reasonable for the officer to infer from his observations, his registration check, and his experience as a border patrol agent that respondent had set out from Douglas along a little-traveled route used by smugglers to avoid the 191 checkpoint. The officer's knowledge further supported a commonsense inference that respondent intended to pass through the area at a time when officers would be leaving their back roads patrols to change shifts."

"The likelihood that respondent and his family were on a picnic outing was diminished by the fact that the minivan had turned away from the known recreational areas. Corroborating this inference was the fact that recreational areas farther to the north would have been easier to reach by taking 191, as opposed to the 40- to-50-mile trip on unpaved and primitive roads. The children's elevated knees suggested the existence of concealed cargo in the passenger compartment. Finally, for the reasons we have given, the officer's assessment of respondent's reactions upon seeing him and the children's mechanical-like waving, which continued for a full four to five minutes, were entitled to some weight."

"Respondent argues that we must rule in his favor because the facts suggested a family in a minivan on a holiday outing. A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct. Undoubtedly, each of these factors alone is susceptible to innocent explanation, and some factors are more probative than others. Taken together, we believe they sufficed to form a particularized and objective basis for the officer's stopping the vehicle, making the stop reasonable within the meaning of the Fourth Amendment." United States v Arvizu, 122 S. Ct. 744 (2002)

Juvenile Offenders will be fingerprinted for any offense that would exceed 92 days – P.A. 187 of 2001 (effective April 1, 2002).

Immediately upon the arrest of a person (including a juvenile) for an offense of state law for which the maximum possible penalty exceeds 92 days imprisonment or a fine of \$1,000.00, or both, or the violation of a personal protection order, the arresting law enforcement agency in this state shall take the person's fingerprints and forward the fingerprints to the Department of State Police within 72 hours after the arrest.
