



LEGAL UPDATE

MICHIGAN STATE POLICE
TRAINING DIVISION

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Are officers required to advise someone of their chemical test rights when they are not under arrest?

The defendant in this case had been involved in an accident and was in the hospital when contacted by the investigating officer. The driver was not under arrest and the officer did not advise her of her chemical test rights. After interviewing her about the accident, he requested that she submit to a blood test. She consented and the results of the test were admitted against her at her trial. The Court of Appeals had suppressed the test results because her chemical rights were not read to her. The Michigan Supreme Court reversed.

The Court held, "Under the implied consent law's clear language, **an arrest is the triggering event** that obligates officers to inform suspects of their chemical rights. The law does not control admissibility of blood test evidence when a suspect is not under arrest. Thus the admissibility of this evidence must fall under a Fourth Amendment analysis." The case was remanded to the lower courts to see if in fact the driver's consent was freely and voluntarily given. People v Borchard-Ruhland, 459 Mich 923 (1999)

Are blood results admissible when obtained over two hours after the incident?

In this case, the defendant was convicted for OUIL causing serious injury. The results used to convict him had a delay of between 128 and 140 minutes between the time of the accident and the test. In reviewing the case, the Michigan Supreme Court upheld the conviction.

"[W]e are satisfied that no sound reasoning exists to engraft the reasonable time element onto the clear language of the statute. To the extent that the passage of time reduces the probative value of the test, the diminution goes to the weight, not

admissibility, and is for the parties to argue before the trier of fact." Under this ruling, any delay in obtaining the blood results should not be grounds for suppression of the evidence. The results should be sent to the jury for their determination on the value. People v Wager, 460 Mich 118 (1999)

Can an intoxicated driver be charged with second-degree murder?

After a fatal traffic accident, defendant was charged with second-degree murder. He argued that he did not have sufficient malice for the charge. "As a necessary element of second degree murder, malice reflects the principle that criminal culpability must be tied to the actor's state of mind. However, as we have repeatedly held, the mens rea for second-degree murder does not mandate a finding of specific intent to harm or kill. The intent to do an act in **obvious disregard of life-endangering consequences** is a malicious intent."

The Court found sufficient evidence in the Hoskinson case to convict the defendant for second-degree murder. Here defendant was highly intoxicated and while leaving the bar backed twice into the same vehicle. This could infer that he should have known that he should not be driving. Still, he drove at a high rate of speed through a residential area. He swerved to miss a car stopped at a stop sign, ran through a stop sign and nearly hit another car. The occupants of his vehicle told him he was driving too fast and should slow down. He then collided with a vehicle, drove over a curb and across some grass and struck the victim. The passengers then jumped out and told him he had hit the child. He continued to drive for several blocks before stopping. People v Hoskinson, 457 Mich 442 (1998).

New OUIL/DWLS Legislation

93 days misdemeanors (1st offense)

- OUIL/UBAC
- OWI
- OUID
- Zero Tolerance 2nd w/i 7 years
- Commercial Motor vehicle .04 - .07
- DWLS

Repeat Offender

- 2nd alcohol offense under 625 or 3rd Offense DWLS

Plate Confiscation

- If arresting a repeat offender, SOS will inform the officer to confiscate and destroy the registration plate. A paper registration plate should then be issued.

Child Endangerment

- Violation under 257.625,
- Passenger under 16
- 1 year misdemeanor

New felony charges for DWLS or allowing someone to drive while DWLS/OUIL causing death or serious injury.

Home Invasion - (October 1, 1999)

Adds the following to Home Invasion First and Second Degree:

- Breaking and entering a dwelling or entering without permission a dwelling with the intent to commit a **misdemeanor assault**.
- If while entering, present in or exiting a dwelling commits a felony, larceny or assault.

Third Degree Home Invasion – 5 year felony

- Enters with intent to commit a misdemeanor or commits misdemeanor while entering, present or exiting dwelling.
- Violates a court order. i.e. probation, parole, PPO, bond or other pretrial release.

Address Verification for Sex Offender Registration

*Beginning January 1, 2000 sex offenders must **verify their address** by contacting a law enforcement agency having jurisdiction over their current address.*

Verification of Residency

- Misdemeanor offenders – January 1-15 annually.
- Felons – First 15 days of January, April, July, October.
- At the end of each period LEIN shall make a list of those individuals who have not verified their address. **Failure to verify address is a misdemeanor**. If it is determined that the subject has moved, felony charges may be sought.

Students and temporary workers

- Required to register if in state for:
 - 14 or more consecutive days
 - 30 or more days in a calendar year

Penalties

- Failure to sign DD-4 and DD-4A = 93 days
- Failure to verify address = 90 day
- Failure to report change of address, or to register or false information = felony. 1st = 4 year, 2nd = 7 year, 3rd = 10 year.

Where can prosecution be sought?

- Individuals last registered address.
- The individual's actual address.
- Where arrest was made.

Moving Out-of-State

10 days prior to moving out-of-state the offender must report their new address to their **local state police post**. DD-4 must be completed and copy faxed to Investigative Resource Unit.
Thanks to D/Lt. Bob Carr, Sgt. Bob Betzing, and Sgt. Joe Thomas for their help with this update.