



# THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Summer, 2017

## People v Rea

Synopsis by Jim Pahl, Editor

Briefly, the whole driveway counts for an OWI prosecution.

On July 24, 2017, the Michigan Supreme Court reversed the Court of Appeals in an OWI case.

This case involved a police officer responding to noise complaints. The officer was walking up the driveway when the Defendant backed his vehicle out of his detached garage and down the driveway. The officer shined his flashlight to alert the Defendant, who drove his vehicle back into the garage.

The Defendant smelled of alcoholic beverage and his speed was slurred. He was arrested for Operating Under the Influence. His BAC was three times the legal limit.

Defendant moved to quash the information and the court granted the motion and dismissed the case. The court found the upper portion closest to the garage was not a place generally accessible to motor vehicles for purposes of criminal liability under MCL 257.625(1).

This decision was upheld by the Michigan Court of Appeals. The Michigan Supreme Court in Docket No 153908 held: MCL 257.625(1) of the Michigan Vehicle Code prohibits a person,

whether licensed or not, from operating 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.

The Court went on to say the phrase “generally accessible” is not defined in the Vehicle Code. Dictionary definitions show the phrase means usually or ordinarily capable of being reached. This is in contrast to the phrase “open to the general public”, which concerns *who* may access a location; the phrase “generally accessible to motor vehicles” concerns what can access the location. Therefore the focus is not whether most people can access the area or have permission to use it, but on whether most motor vehicles can access the area.

Defendant’s driveway was designed for vehicular travel and there was nothing on his driveway that would have prevented motor vehicles on the public street from turning into it. The Court of Appeals erred by affirming the trial court’s dismissal of the OWI charge. The Supreme Court reversed the Court of Appeals, circuit court order of dismissal vacated and the case remanded.

## 2017 MADCM Annual Conference

By: James Pahl, Editor

The 44<sup>th</sup> annual Conference of the Michigan Association of District Court Magistrates will be September 13, 14 & 15 at the Hotel Indigo, Traverse City. Full details and forms are on the Association's website: Madcm.org

### Welcome & Annual Meeting

You will want to arrive a little early on Wednesday so you don't miss the **Welcome Reception** in the Lobby Lounge from 5:00 to 5:45 pm. At 6:00 pm, **Jessica Testolin-Reinke**, President of The Michigan Association of District Court Magistrates will welcome everyone to the Hotel Indigo. We will hold our Annual Business Meeting, which includes the Election of Officers and Directors for the 2018 year.

After the Business Meeting, we are trying something new by conducting the first **Magistrate Roundtable Discussion**.

We will adjourn to the hospitality suite for a **Networking Event** which will include light snacks and beverages.

On Thursday morning we will hear from **Officer Jermaine Galloway** about "**Designer Drug Trends**". After, we will break for our Group Luncheon and Committee Meetings.

On Thursday evening we will have our **Banquet**, where we will present the **Distinguished Service Award** to this year's recipient and swear in the 2018 Officers and Directors. The theme for this year's banquet will be Blast From the Past 70's 80's 90's.

On Friday, we will hear our "highly informative" Agency Updates with representatives from MJJ, MSP, OHSP, PAAM, SOS, DNR, and SCAO.

After a short break, we will bring back a conference favorite, the **Agency Roundtable Discussion** with representatives from MSP, MJJ, OHSP, PAAM, SCAO, DNR, and SOS. *We need everyone to submit questions for the panel in advance, so please send in your questions on the form in the registration packet.*

Our final session will be presented by **Sgt. Lance Cook** about "**PBT's, Drugs, and Traffic Safety**"

As you can see, the Annual Conference is packed full of great education, networking with colleagues and a little bit of fun too. It will be a very valuable conference this year with many new interesting topics to learn about and discuss.



*\*This conference is funded, in part, by a grant to the Michigan Judicial Institute from the Michigan Office of Highway Safety Planning and the U.S. Department of Transportation.*

## From SCAO

From materials supplied by SCAO

### Court Rules and Administrative Orders

#### Proposed

**MCR Cite:** 2.602

ADM File No: 2014-29

Staff Comment: The proposed amendments of MCR 2.602(B) would provide procedural rules regarding entry of consent judgments.

**MRE Cite:** 404(b)

ADM File No: 2015-11

Staff Comment: This proposed amendment would require the prosecution to provide reasonable notice of other acts evidence in writing or orally in open court.

**MRE Cite:** 404(b)

ADM File No: 2015-11

Staff Comment: This proposed amendment would require the prosecution to provide reasonable notice of other acts evidence in writing at least 14 days before trial or orally in open court on the record

**MCR Cite:** 9.200 *et seq.*

ADM File No: 2015-14

Staff Comment: The proposed amendments rearrange and renumber the rules applicable to the JTC to provide clarity and facilitate navigation. The proposed amendments also include new rules and revisions of current rules regarding costs and sanctions, as well as other substantive proposed changes. **\*Pending results of 1/17/17 public hearing.**

**MCR Cite:** 6.425

ADM File No: 2015-15

Staff Comment: The proposed amendments of MCR 6.425 would expressly provide for a procedure under which appointed counsel may withdraw in light of a frivolous appeal in a way that protects a plea-convicted criminal defendant's right to due process. This amendment would ensure that a plea-convicted defendant could obtain the type of protections expressed in *Anders v California*, 386 US 738 (1967), even if the defendant's appeal proceeds by application and not by right. In such a case, a motion to withdraw may be filed in the trial court, which does not currently have a rule establishing the procedure like that in the Court of Appeals at MCR 7.211(C)(5). The timing of the procedure is intended to ensure that if an attorney's motion to withdraw is granted, the defendant would have sufficient time to file an application for leave to appeal under MCR 7.205(G).

**MCR Cite:** 8.110 and 8.111

ADM File No: 2015-20

Staff Comment: The proposed amendments would explicitly provide that corrective action

may be taken by the State Court Administrator, under the Supreme Court's direction, against a judge whose actions raise the question of the propriety of the judge's continued service. Such corrective action may include relieving a judge of the judge's caseload, and reassigning such cases to another judge or judges. The proposed amendments also would provide explicit authority for a chief judge (with approval from the state court administrator) to order a judge to submit to an independent medical examination if there is a good faith doubt as to the judge's fitness that prompted the chief judge's report.

**MCR Cite:** MCR 6.008

ADM File No: 2016-35

Staff Comment: The proposed addition of Rule 6.008 would establish procedures for a circuit court to follow if a defendant bound over to circuit court on a felony either pleads guilty to, or is convicted of, a misdemeanor in circuit court, and would eliminate the practice of circuit courts remanding cases to district court except where otherwise provided by law. Remand to district court would remain a possibility in certain limited circumstances, including where the evidence is insufficient to support the bindover, *People v Miklovich*, 375 Mich 536, 539; 134 NW2d 720 (1965); *People v Salazar*, 124 Mich App 249, 251-252; 333 NW2d 567 (1983), or where there was a defect in the waiver of the right to a preliminary examination, *People v Reedy*, 151 Mich App 143, 147; 390 NW2d 215 (1986); *People v Skowronek*, 57 Mich App 110, 113; 226 NW2d 74 (1975), or where the prosecutor adds a new charge on which the defendant did not have a preliminary examination, *People v Bercheny*, 387 Mich 431, 434; 196 NW2d 767 (1972), adopting the opinion in *People v Davis*, 29 Mich App 443, 463; 185 NW2d 609 (1971), *aff'd People v Bercheny*, 387 Mich 431 (1972). See also MCR 6.110(H). The proposal is intended to promote greater uniformity and address a practice that varies among courts.

**MCR Cite:** 2.625 and 3.101

ADM File No: 2016-40

Staff Comment: The proposed amendments, submitted by the Michigan Creditor's Bar Association, would address recent amendments of MCL 600.4012, would clarify the authority and process for recovering postjudgment costs, and would provide clearer procedure for garnishment proceedings. **\*Pending results of 5/17/17 public hearing.**

**MCR Cite:** 2.107, 2.117, and 6.001

ADM File No: 2016-41

Staff Comment: The proposed rules are intended to provide guidance for attorneys and clients who would prefer to engage in a limited scope representation. The proposal, which limits these types of "unbundled" arrangements to civil proceedings, describes how such an agreement is made known to the court and other parties, what form of communication should be conducted with clients in a limited scope representation, and how the agreement is terminated. The proposed rules also would explicitly allow attorneys to provide document preparation services for a self-represented litigant without having to file an appearance with the court.

### **Adopted**

**MCR Cite:** 2.116 and 2.119

ADM File No: 2015-24

*Effective date :* September 1, 2017

Staff Comment: The amendments, originally submitted in a slightly different form by the State Bar of Michigan Representative Assembly, amend the rules regarding motions for summary disposition to allow for the filing of reply briefs only in summary disposition proceedings.

### **Legislation**

**Statute Cite: MCL 771A.3**

P.A. Number: 2017 PA 17

Effective Date: June 29, 2017

What it Does: Creates the Swift and Sure Probation Supervision Fund within the state treasury. Allows SSSPPs to accept transfers from other jurisdictions and lays out transfer procedures for these cases. Lays out new eligibility criteria for swift and sure programs and provides a list of sanctions and remedies approved by SCAO to effectively address probation violations.

**Statute Cite: MCL 750.1-750.568**

P.A. Number: 2017 PA 29

Effective Date: 8/7/2017

What it Does: Makes aiming a beam of directed energy emitted from a directed energy device at an aircraft or a moving train a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$100,000, or both.

**Statute Cite: MCL 750.451c**

P.A. Number: 2017 PA 34

Effective Date: May 23, 2017

What it Does: Allows the court to defer proceedings on certain prostitution-related offenses for human trafficking victims. The court can dismiss the charge upon the defendant fulfilling the terms of their probation. This act removes the restriction that a person may be eligible only if there were no prior convictions.

**Statute Cite: MCL 600.1344**

P.A. Number: 2017 PA 51

Effective Date: September 13, 2017

What it Does: Amends section 1344 of the Revised Judicature Act, beginning April 1, 2018, to increase from .10 per mile to .20 per mile the mileage reimbursement rate for jurors. Also increases the minimum compensation for jurors provided sufficient funds were available in the Juror Compensation Reimbursement Fund, as determined by the State Court Administrator.

**Statute Cite: MCL 600.151e**

P.A. Number: 2017 PA 52

Effective Date: September 13, 2017

What it Does: Amends the Revised Judicature Act to authorize the State Court Administrator to allocate money from the Juror Compensation Reimbursement Fund to enter into a contract for jury management software. Also authorizes the State Court Administrator to provide money from the fund for a position within the State Court Administrative Office that provides technical assistance to all state trial courts on jury management. Eliminates a \$40,000 annual cap on expenses for which the State Court Administrator must be reimbursed and provides for court funding units to receive reimbursement from the fund for the increase in the statutory minimum compensation rate under Section 1344 of the act, excluding certain amounts.

**Statute Cite: MCL 750.462g**

P.A. Number: 2017 PA 53

Effective Date: September 13, 2017

What it Does: Amends Chapter 67A (Human Trafficking) of the Michigan Penal Code to specify that expert testimony as to the behavior patterns of human trafficking victims and the manner in which a victim's behavior may deviate from societal expectations would be admissible as evidence in court in a prosecution under Chapter 67A, if the testimony were otherwise admissible under the rules of evidence and law of the state.

**Statute Cite: MCL 257.676**

P.A. Number: 2017 PA 61

Effective Date: September 26, 2017

What it Does: Amends the Michigan Vehicle Code to require a person to remove and take the ignition key when allowing a motor vehicle to stand on a highway unattended. This does not apply to a vehicle that is standing in place and is equipped with a remote start feature, if the remote start feature were engaged. Violation of this section is a civil infraction.

**Statute Cite: MCL 769.1k**

P.A. Number: 2017 PA 64

Effective Date: June 30, 2017

What it Does: Amends the Code of Criminal Procedure to extend the authority of courts to impose costs related to the actual costs incurred by trial courts for court operations. This authority is extended until October 17, 2020.

**Statute Cite: 600.11101 – 600.11105**

P.A. Number: 2017 PA 65

Effective Date: September 28, 2017

What it Does: Enacts the "Trial Court Funding Act" to create the Trial Court Funding Commission within the Department of Treasury. The commission is required to review and recommend changes to the trial court funding system in light of *People v. Cunningham*. The commission is also required to review and recommend changes to the methods by which courts impose and allocate fees and costs, suggest statutory changes necessary to implement suggested changes, and file a final report with the Governor, the Senate Majority Leader, and the Speaker of the House of Representatives regarding its activities. The report will have to include the results of the commission's review and its recommendations. The commission exists until the report is filed, which would have to occur within two years after the effective date of this act.

**Statute Cite: MCL 600.2534**

P.A. Number: 2017 PA 82

Effective Date: September 28, 2017

What it Does: Amends the Revised Judicature Act to require the Department of Treasury to adjust the fees that a newspaper may charge for certain legal notices published after this amendment's effective date to reflect percentage increases in the United States Consumer Price Index.



**Statute Cite: MCL 436.1909**

P.A. Number: 2017 PA 87

Effective Date: September 28, 2017

What it Does: Amends the Michigan Liquor Control Code to prescribe penalties for violation of Section 203(1). A person, whether or not a licensee, who sells, delivers or imports beer or wine in violation of Section 203(1) is guilty of the following: if the amount of beer or wine is at least 45,000 milliliters but less than 225,000 milliliters the violation is a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$2,500, or both. If the amount of beer or wine is less than 45,000 milliliters, the violation is a state civil infraction and the person responsible can be ordered to pay a civil fine of up to \$500.

**Statute Cite: MCL 436.1703**

P.A. Number: 2017 PA 89

Effective Date: September 28, 2017

What it Does: Amends the Michigan Liquor Control Code to prohibit the administration of a preliminary chemical breath analysis if a minor did not consent to it, and allows a peace officer to seek a court order for the test.

**Case Law**

*Nelson v Colorado*, 581 US \_\_, \_\_ (2017). The petitioner was convicted by a Colorado jury of two felonies and three misdemeanors arising from the alleged sexual and physical abuse of her four children. The trial court imposed a prison term of 20 years to life and ordered her to pay \$8,192.50 in court costs, fees, and restitution. On appeal, Nelson’s conviction was reversed for trial error, and on retrial, she was acquitted of all charges. Another petitioner, Madden, was convicted by a Colorado jury of attempting to patronize a prostituted child and attempted sexual assault. The trial court imposed an indeterminate prison sentence and ordered him to pay \$4,413.00 in costs, fees, and restitution. After one of his convictions was reversed on direct review and the other vacated on post-

conviction review, the state elected not to appeal or retry the case. The Colorado Department of Corrections withheld \$702.10 from Nelson’s inmate account between her conviction and acquittal, and Madden paid the State \$1,977.75 after his conviction. In both cases, the funds were allocated to costs, fees, and restitution. Once their convictions were invalidated, both petitioners moved for return of the funds. Nelson’s trial court denied her motion outright, and Madden’s post-conviction court allowed a refund of costs and fees, but not restitution. The Colorado Court of Appeals concluded that both petitioners were entitled to seek refunds of all they had paid, but the Colorado Supreme Court reversed. It held that Colorado’s Certain Exonerated Persons statute provided the exclusive authority for refunds and that there was no due process problem under that Act. The United State Supreme Court held that the Exoneration Act’s scheme does not comport with the Fourteenth Amendment’s guarantee for due process. Pp. 5-11. When a criminal conviction is invalidated by a reviewing court and no retrial will occur, . . . the state [is] obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, the conviction[;] the retention of such conviction-related assessments following the reversal of a conviction, where the defendant will not be retried, “offends the Fourteenth Amendment’s guarantee of due process.” (holding that a Colorado statute requiring a petitioner to “prove [his or] her innocence by clear and convincing evidence to obtain [a] refund of costs, fees, and restitution paid pursuant to an invalid conviction . . . does not comport with due process”). The judgments of the Colorado Supreme Court are **reversed, and the cases are remanded** for further proceedings not inconsistent with this opinion.

*People v Bryant*, \_\_\_ Mich App \_\_\_, \_\_\_ (2017). The defendant pleaded guilty to possession of a firearm during the commission of a felony, second offense (felony-firearm 2d), MCL 750.227b(1), pursuant to a plea and sentencing agreement. The trial court sentenced the defendant to serve five years in prison, concurrently with the sentence imposed in another case and consecutively to existing parole. Defendant was also ordered to pay costs and fees and \$1,000 in restitution. Defendant applied for leave to appeal, challenging the restitution order and arguing that his trial counsel was ineffective for failing to object to the restitution order at sentencing. The COA denied his application. Defendant then applied for leave to appeal in the Michigan Supreme Court. The Supreme Court remanded the case back to the COA “for consideration as on leave granted of the defendant’s issue regarding the propriety of the Wayne Circuit Court’s restitution award in light of *People v McKinley*, 496 Mich 410; 852 NW2d 770 (2014).” *People v Bryant*, 499 Mich 896; 876 NW2d 821 (2016). **The COA found that where the defendant, who broke into a home and stole items including firearms, pleaded guilty of possession of a firearm during the commission of a felony, second offense, in exchange for the dismissal of a charge of second-degree home invasion, the defendant was properly ordered to pay restitution under MCL 780.766(2) and MCL 769.1a(2) for all of the homeowner’s losses associated with the entire course of criminal conduct.** *People v McKinley*, 496 Mich 410 (2014), and *People v Corbin*, 312 Mich App 352 (2015). The felony-firearm conviction “was necessarily based on the predicate felony of second-degree home invasion[;] . . . [w]hile the home invasion charge was dismissed, its *commission* was part and parcel of the felony-firearm conviction, and the course of conduct for the home invasion included stealing the victim’s belongings.” *Bryant*, \_\_\_ Mich App at \_\_\_ (quotation marks omitted). “The law simply does not require that when a conviction results from a plea, a defendant must

specifically reference each stolen item in order for the prosecution to obtain a restitution order for stolen goods[;]” rather, “[o]nce [the] defendant was properly convicted[,] . . . the prosecution was then allowed to prove the amount of restitution related to [the] defendant’s course of conduct by a preponderance of the evidence and by reference to the PSIR[,]” and “[t]he course of conduct necessarily included the circumstances relating to the required predicate offense of second-degree home invasion.”

(*People v Bryant*, unpublished order of the Court of Appeals, entered August 31, 2015 (Docket No. 328512))

*People v Maggit*, \_\_\_ Mich App \_\_\_, \_\_\_ (2017). The defendant was charged with possession of a controlled substance analogue, resisting and obstructing, and possession with the intent to distribute an imitation controlled substance after being arrested in a parking lot in Grand Rapids. The arresting officer witnessed the defendant traverse by a “no trespassing” sign in the parking lot, which was being watched for illegal activity, but could not see whether or not he engaged in any narcotics transaction. The officer notified dispatch that he was going to stop someone for trespassing and approached the two men. When he instructed the men to stop, one man did, but the defendant continued to walk, even after the officer announced to the defendant he was being arrested for trespassing. The defendant ran from the officer and was detained after a foot chase. The question arose as to whether this was an unreasonable search and seizure. **The Michigan Court of Appeals ruled there was no probable cause to arrest the defendant. “There was no probable cause to arrest [the] defendant for trespassing under [a] city ordinance” where the defendant walked through a parking lot “that was open to the public, during business hours, for a very brief period of time, and during that brief time, no indication was given that [the] defendant was told to leave or that he**

**annoyed or disturbed anyone[;]” “[t]he fact that the officer knew the parking lot . . . was often used for illegal drug transactions and other illicit purposes [did] not change the analysis.”**

*People v Frederick*, \_\_\_ Mich \_\_\_, \_\_\_ (2017). Michael Frederick and Todd Van Doorne were separately charged in the Kent Circuit Court with various drug offenses after seven officers from the Kent Area Narcotics Enforcement Team made unscheduled visits to the defendants’ respective homes during the predawn hours on March 18, 2014. Officers knocked on Frederick’s door around 4:00 a.m. and on Van Doorne’s door around 5:30 a.m. Officers woke defendants and their families for the purpose of questioning each defendant about marijuana butter that they suspected the defendants possessed. Both defendants subsequently consented to a search of their respective homes, and marijuana butter and other marijuana products were recovered from each home. Defendants moved to suppress the evidence, but the court denied their motions, concluding that the officers had not conducted a search by knocking on defendants’ doors during the predawn hours and that the subsequent consent searches were valid. Defendants sought interlocutory leave to appeal, which the Court of Appeals denied in separate unpublished orders entered October 15, 2014 (Docket Nos. 323642 and 323643). Defendants sought leave to appeal in the Supreme Court. The Supreme Court, in lieu of granting leave to appeal, remanded the cases to the Court of Appeals for consideration as on leave granted and directed the Court of Appeals to address whether the “knock and talk” procedure conducted in these cases was consistent with the Fourth Amendment. The Supreme Court ruled that the scope of the implied license to approach a house and knock is time-sensitive; it generally does not extend to predawn approaches. While approaching a home with the purpose of gathering information is not, standing alone, a Fourth Amendment search, when information-gathering is conjoined with a

trespass, a Fourth Amendment search has occurred. In these cases, the police conduct exceeded the scope of the implied license to knock and talk because the officers approached the defendants’ respective homes during the predawn hours; therefore, the officers trespassed on Fourth-Amendment-protected property. And because the officers trespassed while seeking information, they performed searches in violation of the Fourth Amendment. **The case was reversed and remanded to the Kent Circuit Court to determine whether defendants’ consent to search was attenuated from the officers’ illegal search.**

*People v Parker*, \_\_\_ Mich App \_\_\_, \_\_\_ (2017). The defendant was charged with OWI, but argued the lab results presented at his probable cause hearing were inadmissible under MCR 6.110. The defendant argued that the court rule trumped MCL 766.11b although the court rule appeared to render the lab report admissible. The circuit court agreed, but the prosecution sought a leave of appeal. The Michigan Court of Appeals found the district court properly admitted the laboratory report pursuant to the statutory hearsay exception in MCL 766.11b. MCL 766.11b(1), created a statutory exception to this rule, whereby “[t]he rules of evidence apply at the preliminary examination except” that the hearsay rule does not preclude certain laboratory reports from being admitted, among other things. When a court rule irreconcilably conflicts with a statute, the conflict is resolved in the rule’s favor if it is a matter of procedure, but in the statute’s favor if it is matter of substance. The court ruled MCL 766.11b is an enactment of a substantive rule of evidence, not a procedural one. It was found substantive because, “MCL 766.11b continues the Legislature’s long-adopted goal of reducing the number of times a laboratory professional has to testify in a criminal case by suspending the hearsay rule during the preliminary examination. This policy conserves local and state law-enforcement resources, and while there may be some similar savings to district courts, the policy does, in fact, go beyond mere court administration or the dispatch of judicial business.” **The circuit court abused its discretion by remanding defendant’s**



case to the district court for continuation of the preliminary examination. We reverse the circuit court's order and remand this action for continuation of the proceedings before the circuit court.



## From SOS

Additional new legislation from materials supplied by Lee Ann Gaspar, Court Liaison

### • PA 445 (HB 4423 of 2016) – Effective January 5, 2017

Amends MCL 257.627 to revise, establish or modify current speed limits across Michigan.

- Revise speed limits that are based on the number of vehicular access points
- Speed increased from 60 mph to 65 mph for persons operating a school bus, a truck with a gross weight of 10,000 pounds or more, a truck-tractor, or a truck-tracker with a semi-trailer or trailer or a combination of these vehicles on a

Limited Access freeway or state trunk line highway

- Speed limit in a hospital zone shall be decreased by up to 10 mph upon request of a hospital located within that hospital zone
  - Speed limit on at least 600 miles of Limited Access Freeway shall increase from 70 mph to 75 mph if free-flowing traffic under ideal conditions it is found that the speed limit may be raised to the speed
  - Speed limit on 900 miles of trunk line highway shall increase to 65 mph if free-flowing traffic under ideal conditions it is found that the speed limit may be raised to the speed
- Repeals MCL 257.629, allowed local authorities to establish or increase the prima facie speed limits on highways under their jurisdiction.

### • PA 446 (HB 4424 of 2016) – Effective January 5, 2017

Amends MCL 257.627a to modify school zone speed limits; an individual who violates a school zone speed limit is responsible for a civil infraction.

- A school zone extends not more than 1,000 feet from the school property line in any direction
- A school zone speed limit may be decreased by not more than 20 mph less than the speed limit normally posted but shall be not less than 25 mph
- A school zone shall be in force no more than 30 minutes before the first regularly scheduled school session, until school commences, and from dismissal until not more than 30 minutes after the last regularly scheduled school session
- A school that is in session year-round, a sign must be posted

### • PA 447 (HB 4425 of 2016) – Effective January 5, 2017

Amends MCL 257.628 sets requirements to determine modification of speed limits on Michigan roadways.

• **PA 448 (HB 4426 of 2016) – Effective January 5, 2017**

Amends MCL 257.248c to require a postmarked notice of salvage, and shall warn the owner and lienholder of record that failure to redeem the vehicle within 30 days after notice will result in the sale of a vehicle and the termination of rights to the owner and the lienholder of record to the vehicle; and the proceeds of a sale.

**Effective January 5, 2018**

Amends MCL 257.320 which allows the secretary of state to conduct a reexamination of a person who accumulates 6 or more one point violations within a 2 year period, as provided in MCL 257.320a(q).

Amends MCL 257.320a to modify the number of points assigned to a person's driving record for speeding.

- Speed exceeding by more than 10 mph but not more than 15mph will be assessed 3 points
- Speed exceeding by more than 5 mph but not more than 10 mph will be assessed 2 points
- Speed exceeding by more than 1 mph but not more than 5 mph will be assessed 1 point
- Speed in work zone exceeding 10 mph or less will be assessed 3 points

• **PA 318 (HB 4651 of 2016) – Effective February 7, 2017**

Amends MCL 257.312a, an individual who operates a motorcycle without an endorsement is guilty of a misdemeanor, increases penalties.

- First violation is punishable by imprisonment for up to 90 days or a maximum fine of \$500, or both
- Second or subsequent violation is punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both

• **PA348 (HB 4641 of 2016) – Effective March 21, 2017**

Amends MCL 257.6 definition of chauffeur; 257.7 definition of a commercial vehicle; adds 12c, 25c, 25d, 40c, 67c, 67d, 76a, 76b, 76c, 76d definition of limousine, taxicab, and

Transportation Network Company (TNC); and 518b requirements of insurance coverage.

- Redefines "Chauffeur" to exclude a limousine, taxicab, or TNC driver
- Commercial vehicle does not include a limousine operated by a limousine driver, a taxicab operated by a taxicab driver, or a personal vehicle operated by a TNC driver
- Identify types of automobile insurance that satisfy the financial responsibility requirements of the Code when a TNC driver is logged onto a TNC's digital network and is available to receive transportation requests but is not engaged in a prearranged ride, and when the driver is engaged in a prearranged ride.

• **PA 450 (HB 4142 of 2016) – Effective April 5, 2017**

Amends MCL 257.724 to require rather than permit the courts to impose:

- A misload fine of \$200 per axle, if an overweight vehicle or vehicle combination would be lawful by proper distribution of the load, but one or more axles exceeded the maximum weight by more than 1,000 but less than 4,000 pounds
- A per-pound fine for pounds exceeding the permitted axle weight under a special permit, if the court determined that a vehicle or vehicle combination would meet specified loading restrictions by a proper distribution of the load, but one of the axles exceeded the permitted weight by more than 1,000 pounds
- A per-pound fine if the court determines that a vehicle or vehicle combination would be lawful by proper distribution of the load, but at least one axle exceeded the permitted axle weight by more than 4,000 pounds, to refer to between 4,000 and 8,000 pounds and require a misload fine of \$400 per axle, up to three axles
- A fine according to the per-pound schedule, if a vehicle or vehicle combination would be lawful by a proper distribution of the load, but at least one axle exceeded the permitted weight by more than 8,000 pounds

• **PA 35 (HB 4167 of 2017) – Effective August 21, 2017**

Amends MCL 257.719 which increased truck and trailer combinations transporting agricultural drainage tubing length limit to 75 feet.

• **PA 37 (SB46 of 2017) – Effective August 21, 2017**

Amends MCL 257.698 which eliminated the requirement that emergency lights be mounted on the roof of an authorized emergency vehicle.

• **PA 59 (HB 4013 of 2017) Effective September 26, 2017 -**

Amends MCL 257.223 registration; paperless registration allow.

• **PA 61 (HB 4215 of 2017) Effective September 26, 2017 –**

Amends 257.676 unattended running vehicles; allow under certain circumstances.

- Requires removing and taking possession of the ignition key.
- Does not apply to a vehicle that is standing in place and is equipped with a remote start feature, if the remote start feature is engaged.

• **PA 89 (HB4213 of 2017)**

Amends MCL 436.1703 Liquor; drinking age; obtaining court order before nonconsensual preliminary chemical breath testing of a minor; require.

- Requires- if a minor does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order.

**PA 94 (SB 160 of 2017)- Effective October 11, 2017-**

Amends secs. MCL 257.25a & 257.31

- Modifies definitions of Autocycle and Motorcycle – for Autocycle PA 94 removes the requirement of being enclosed, windshield and wipers. However, PA 94 also added the

requirement of roll hoops. For Motorcycle definition includes an Autocycle.

• **PA 112 (HB4160 of 2017) –**

Amends sec. MCL 257.676b traffic regulation; solicitation of contributions in public roadways by certain nonprofit organizations; allow under certain circumstances.

- Allows for a person who is soliciting contributions on behalf of a charitable or civic organization during daylight hours, if all of the following are satisfied:
  - (a) The charitable or civic organization complies with applicable local government regulations. A local government may enact or enforce regulations restricting, but not prohibiting, the activity described in this subsection.
  - (b) The charitable or civic organization maintains at least \$500,000.00 in liability insurance.
  - (c) The person is 18 years of age or older.
  - (d) The person is wearing high-visibility safety apparel that meets current American standards promulgated by the International Safety Equipment Association.
  - (e) The portion of the roadway upon which the solicitation occurs is not a work zone and is within an intersection where traffic control devices are present.
- A local government or road authority that has jurisdiction over a roadway upon which solicitation occurs is not liable for any claim for damages arising out of the use of the roadway.

• **PA 357 (SB332 of 2016) – Effective January 1, 2018**

Amends MCL 436.1703 penalties for a minor in possession (MIP) violation.

- First violation is a state civil infraction with a maximum fine of \$100 – one time only
- Second violation is a misdemeanor punishable by imprisonment for not more than 30 days, a maximum fine of \$200, or both
- Third violation is a misdemeanor punishable by imprisonment for not more than 60 days, a fine of not more than \$500, or both

- An individual can still have the second (or first misdemeanor offense) deferred

- **PA 358 (SB333 of 2016) – Effective January 1, 2018**

Amends MCL 257.319 to define a “prior conviction” for purposes of a license suspension and indicates that it includes either a misdemeanor or a civil infraction determination.

- One prior conviction (either a state civil infraction or a misdemeanor) the license must be suspended for 90 days, a restricted license may be issued after 30 days
- Two or more prior convictions the license must be suspended for 1 year, a restricted license may be issued after 60 days

## From MJI

From materials supplied by Peter Stathakis, Program Manager, Michigan Judicial Institute

The Magistrate Specialty Seminar was held August 3<sup>rd</sup> with 38 magistrates attending. Topics included a Statutory, Court Rule, and Case Law Update, Medical Marijuana/DRE update, Implicit Bias, CMV Drugged Driving Strategies, Roundabouts – an Educational Campaign and Autonomous Vehicles Update.

The District Court Magistrate’s Manual was again updated and can be found on-line at the MJI website. This publication is updated three times a year.

If you are not yet subscribing to the e-version of IMPACT, you can do so at:  
<http://info.courts.mi.gov/court-news-subscribe-0>

## From PACC/PAAM

supplied by Kinga Gorzelewski - Traffic Safety Resource Prosecutor

The state of Utah will lower the per se presumption for Operating While Intoxicated to .05 BAC effective in 2018. This is the first U.S.

state to do this, however, this is the common level in most counties in Europe. Michigan is still subject to a sunset provision and unless there is legislative action, will go to .10 BAC next year. It appears the current proposal is to extend the sunset by five years, rather than totally eliminate it.

## From OHSP

From materials borrowed from the SAFETY Network newsletter

The 23<sup>rd</sup> Annual Traffic Safety Summit will be held at the Kellogg Hotel and Conference Center in East Lansing on March 20-22, 2018. They are searching for general session and workshop projects. This is an excellent opportunity for magistrate’s to receive updates in recent developments in traffic law and safety.

## Research says states should consider risk of marijuana-impaired driving.

New research from the Highway Data Loss Institute (HLDI) reinforces the need for states to consider the risk of marijuana-impaired driving as they move toward liberalizing marijuana laws.

HLDI insurance claims data links legalizing recreational marijuana to an increase in motor vehicle crashes. Specifically, the first three states to legalize recreational marijuana had a combined effect of 3 percent more collision claims than their neighboring states after introducing retail sales.

To conform this complex and evolving highway safety issue, the Governor’s Highway Safety Association (GHSA) and the Foundation for Advancing Alcohol Responsibility recently released a comprehension report about drug use on the nation’s roadways. *Drug Impaired Driving: A Guide for States* equips policymakers with the latest research, data, laws and programs to help them address this growing problem. The



most recent national data found marijuana was present in 12.2 percent of all fatally injured drivers tested for drugs.

The report also highlights a key drug-impaired driving challenge: improving the quality and quantity of data related to drug-impaired driving. The GHAS recommends states increase drug testing, bolster laboratory resources, track DWI and DWID data separately in state records, use surveys to gauge public attitudes and evaluate the effects of any law or program changes. A copy of the report is available at:  
<http://www.ghas.org/resources/drugged-driving-2017>

## MI OFFICER Smart Phone App

By James Pahl, 55<sup>th</sup> District Court

Traffic safety resource warehouse for Michigan law enforcement and criminal justice personnel.

Features:

- Michigan Vehicle Code
- Uniform Traffic Code for Cities, Townships and Villages
- Commercial Vehicle Enforcement
- Traffic Crash Investigations
- OWI enforcement
- Michigan Penal Code
- Publications by the Michigan Secretary of State

Updates coming quickly will include the Michigan Medical Marijuana Law and a drug identification tool. Further updates will be made quarterly.

**Go to your Smartphone app store and search: MI Officer – this is a free app**

Many of you have heard of this. It is available on both android and IOS formats. Android has been fully live for some time and automatically updated from the beta version to the full version.

Apple is being a little more difficult. If you have a beta version on your I-phone or other IOS product, you have to go back to your app store to get the full operational version. The full version has a number of additional resources not available on the beta version – so download yours today!

Many thanks to the Office of Highway Safety Planning for the grant which made this app possible.

