



# THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Fall, 2006

## 2007 ASSOCIATION OFFICERS

**Congratulations** *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

The 2007 Board of Directors:

James Pahl, President  
55<sup>th</sup> District Court  
Charles Anderson, III, Vice President  
36<sup>th</sup> District Court  
Norene Kastys, Secretary  
86<sup>th</sup> District Court  
Tom Truesdell, Treasurer  
14-A District Court  
Krista Krause, Director  
55<sup>th</sup> District Court  
Dena Altheide, Director  
67<sup>th</sup> District Court  
Robert Clark, Director  
5<sup>th</sup> District Court  
Dennis Hall, Director  
70<sup>th</sup> District Court  
Charles Pope, Director  
14-B District Court  
Jennifer Bennion, Director  
96<sup>th</sup> District Court  
Cora Gregory, Director  
67<sup>th</sup> District Court  
Tom Bleau, Past President  
74<sup>th</sup> District Court

We have one vacancy in the board, which will be filled by appointment at the January board meeting.

**End of an Era**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court.*

I have been the editor of this newsletter since 1995. With my election as President and some other outside affiliations that are taking up my time, I am stepping down as Editor. Kevin McKay of the 66<sup>th</sup> District Court will be filling these shoes with the next edition. Welcome aboard Kevin.

**2007 Conference**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court, based upon materials provided by Tom Bleau.*

Something very different is in the works. We have a grant from the Office of Highway Safety Planning to bring in a nationally rated speaker on traffic safety issues. This will be held in the Metro Detroit area and the Thursday sessions will be opened to the public for this speaker. The Wednesday and Friday sessions will still be just for us. The 36<sup>th</sup> District Court magistrates will be coordinating the social events, so this promises to be one that you will not want to miss. More details later. Firm dates have not been determined. This will depend upon our speaker and also the Tiger's schedule!

**New Traffic Laws** *by James Pahl, Magistrate, 55<sup>th</sup> District Court, based upon materials provided by Sandra Hartnell, SCAO.*

PA 339 (SB 1224) is effective August 15, 2006 and amends section 612 of the vehicle code and also section 660, clarifying the right of bicycles and other low speed devices to use the public streets and highways.

PA 297 (HB 4807) allows officers of a city, township or village officer may enter upon a private road that is accessible to the general public to enforce provisions of an ordinance adopted under this section, if signs meeting the requirements of the Michigan Manual of Uniform Traffic Control Devices are posted on that private road. The owner of the property is responsible for the posting and maintenance of such signs.

(Editorial note: I don't see this as giving authority for officers to enforce state law in this circumstance, only local ordinances adopted pursuant to section 257.951 of the Michigan Vehicle Code)

## **Vehicle Code Updates**, by James Pahl,

*Magistrate, 55<sup>th</sup> District Court, based upon materials provided by Sandra Hartnell, SCAO.*

Sgt. Lance Cook of the Michigan State Police Traffic Services Division, Vehicle Code unit, has offered an invitation to join a listserve he publishes with updates on vehicle code issues. Anyone interested can email him at [CookLR@michigan.gov](mailto:CookLR@michigan.gov) or call him at (517) 336-6660.

## **Story of the Month**, by Jill M. Booth,

*Deputy Court Administrator, 10<sup>th</sup> District Court*

1. "The hill entrapped me into speeding."
2. "While I recognize my purpose and activities in Michigan working in the primary election [as a poll watcher] are not absolute excuses to a speeding violation on the Michigan freeways, I hope that you might recognize that my unjustified rush was in service of a civic end."

## **Safety Belt Guide**, by James Pahl, *Magistrate, 55<sup>th</sup> District Court, based upon materials provided by OHSP*

Wonder no more about who is responsible to see those pesky belts are properly fastened and adjusted. Hopefully the following will help fill in the gaps.

From birth age three, all passengers shall be in a properly secured and approved Child Restraint system. The driver is responsible for this, MCL 257.710d.

From age four to fifteen, all passengers of this age group shall wear a properly fastened and adjusted safety belt system. The driver is responsible for this, mCL 257.710e.

16 years and older, the driver and all front seat passengers shall wear a properly fastened and adjusted safety belt system. The violating occupant is responsible for this, mCL 257.710e.

Beginning with the 1974 model year (through 1989) all passenger cars with hard tops were equipped with front shoulder belts. Beginning in the 1990 model year, all passenger cars with hard tops had both front and rear shoulder belt systems. (Lap belt only for those in the middle seat). From the 1992 model year, convertibles, trucks under 10,000 lbs and multipurpose passenger vehicles were required to be equipped with front and rear shoulder belts. Some trucks over 10,000 lbs are not required to be equipped with shoulder belts.

Child Restraint Exceptions (less than 4 years) include passengers in a bus, school bus, taxicab, or other motor vehicle not required to be equipped with a safety belt.

Safety belt exceptions include any vehicle manufactured before January 1, 1965, bus, written verification from a physician for physical or medical reasons, commercial or US Postal

Service vehicle that makes frequent stops, rural postal carrier while serving route.

(Editor's note - The frequent stop exception. I have found that most of those making the frequent stop claim as a defense, their vehicle does not qualify as a commercial vehicle. I look at the definition in the vehicle code and also ask if the vehicle is licensed and insured as a commercial vehicle. Most of these defenses fail at this point. For those that do qualify as a commercial vehicle, this court has adopted a very narrow definition for the term "frequent", to mean within a city block or so. Any stop that is farther away than a city block is no longer frequent in this district. US Postal regulations require all of their drivers to wear a properly fashioned and adjusted safety belt at all times, as do most major package delivery services, such as UPS and Fed Ex.)

### **National Judicial College**, *based upon materials provided by SCAO.*

Two magistrates recently completed training courses at the National Judicial College in Reno, Nevada.

Magistrate Brent Weigel of the 3-A District Court in Branch County, completed the Sentencing Motor Vehicle Law Offenders course. This course is designed to provide an overview of sentencing practices and evidence-based options for traffic offenders, including younger drivers, older drivers, repeat offenders, status offenses, substance abusers and illegal immigrants. Adapt valid conditions of probation and/or sentencing alternatives, recognize appointment of counsel issues at critical stages, identify and utilize assessment, treatment and counseling resources to assist in imposing sentences.

Magistrate James Pahl of the 55<sup>th</sup> District Court in Ingham County, completed the Commercial Driver Licensing Laws - Faculty Development Seminar.

Topics covered included the Role of Judiciary in Commercial Motor Vehicle Safety; Applicable Federal Regulations; Perspectives from Behind the Wheel; Presenting to Adults; Communicating Information Effectively; Powerpoint Instruction and a CDLIS Demonstration (the national repository of commercial driver license histories), design and presentation of a Commercial Motor Vehicle education seminar.

### **Vehicle Immobilization**, *by James Pahl, Magistrate, 55<sup>th</sup> District Court*

MCL 257.37 states that a person is the owner if they rent or have exclusive use of a vehicle under lease or otherwise, for a period that is greater than 30 days.

Changes in Speed Laws, by James Pahl, Magistrate, 55<sup>th</sup> District Court, based upon MSP Field Update #19, provided by Sgt. Lance Cook, MSP Traffic Services.

Effective November 9, several sections of the Vehicle Code as related to speed limits are changing.

Truck Speeds: Limited access highways where passenger vehicles are allowed 70 mph, trucks speed limits increased from 55 to 60 mph.

School Bus Speeds: Highways where passenger cars are allowed 55 or 65 mph, school buses can travel 55 mph. On limited access freeways with 70 mph speed zones, school buses are now allowed 60 mph.

Minimum Freeway Speed. Increased from 45 mph to 55mph, except where lower speeds are indicated due to conditions or permit.

Business District. New definition where 25 mph speed limits are in effect without posting.

Residence District. Former definition is being repealed. There is a formula based upon the number of driveways and intersecting streets that

will set out what the prima facia speed limit is. In the absence of postings, these areas are 55 mph. Public streets within platted subdivisions and condominium complexes will be prima facia 25 mph.

Traffic Control Orders. Speed limits higher than 25 and lower than 55 (70 on freeways) will require a traffic control order based upon a traffic engineering study, which must be filed with the county clerk for county roads or state trunklines, with the municipal clerk for city or village streets.

## **MI Speed Measurement Task Force Report**, *by Roberta Wray, Magistrate, 67-3 District Court.*

Here's my report on the MSMTF meeting, held October 6, 2006. There was a long and acrimonious discussion about who should be training the instructors of radar operators in the future. This issue came up because the State Police is offering a course to train Instructors which is largely based on the course which has been offered by MSU for \$600.

The MSP course is \$150, and of course, free to troopers who want to become Radar Instructors.

MCOLES has registered the State Police program, meaning they are free to offer it. MCOLES does not certify programs, but registers them if the curriculum that is presented meets established criteria. MCOLES has never registered or recognized a sole source as a training provider.

Therefore, they say as long as the program meets the training criteria, it's good to go.

The hang up occurs because the MSMTF has not established criteria for Instructors of Radar Instructors, nor for Laser Operators. Therefore,

the training committee has been given the task of coming up with training criteria in both of those areas in time for our scheduled Spring meeting.

In other action, Pete Stathakis of MJI has been elected vice chair of the task force. To replace him as chair of the adjudication committee, Dr. Bryde has appointed yours truly. That means I will automatically be a member of the Task Force Steering Committee. I don't know how many additional meetings that entails. I expect it means e-mail conferences about issues that might need to be brought before the entire Task Force.

The issue of "who trains the trainers" remains to be resolved. However, at this time the MSP has an approved curriculum, copied in large part from the MSU curriculum which was established with the assistance of OHSP funds and is, therefore, in the public domain and open to anyone who wants to try to set up a training program, with MCOLES registration.

That's my report for the time being. The next task force meeting is in April.

# **Applicability of the Federal Motor Carrier Safety Regulations to Intrastate Transportation in Michigan**, by Lt. David Ford, Michigan State Police, Motor Carrier Division

Recently, an attorney in Southeastern Michigan has contended in several court cases that Michigan has not adopted the correct definition of “commercial motor vehicle” for intrastate transportation.

The attorney is arguing that the correct definition is in Part 350 of the Federal Motor Carrier Safety Regulations and since Michigan did not adopt Part 350, then the definition of “commercial motor vehicle” in Section 257.7a of the Motor Vehicle Code (Act 300 PA 1949) must be used.

The attorney contends that the definition in Section 257.7a is “the state definition” of commercial motor vehicle. This argument benefits his clients, since the definition in the Motor Vehicle Code has a significantly higher threshold than the proper definition.

Below is an outline of how to properly determine applicability of the Federal Motor Carrier Safety Regulations (FMCSR):

- The FMCSR is adopted into state law via Section 480.11a of the Michigan Motor Carrier Safety Act (Act 181 PA 1963). Michigan has adopted the following Parts: 40, 356, 365, 368, 371-373, 375, 376, 379, 382, 385, 387, 390-393, 395-399.
- The FMCSR that Michigan has adopted has a definition of “commercial motor vehicle” in Section 390.5, so the definition in the Motor Vehicle Code, a separate act of law, is not applicable here. There are several acts of law in Michigan statute that define the term “commercial motor vehicle.” Each definition has to be considered separately to determine the applicability of that particular act.
- Michigan has not adopted Part 350 of the FMCSR. Part 350 contains the federal regulations that states must comply with to apply for and receive federal grant funding for truck enforcement activities. It does define the term “commercial motor vehicle” for the purposes of receiving federal grant funding. The federal government does not use the Part 350 definition to enforce the FMCSR, they use the definition in Part 390.
- Because the FMCSR regulates interstate commerce, the Michigan Legislature inserted the following language in Section 480.11a(b)(ii), after the adoption of the FMCSR:  
*“Where “interstate” appears, it shall mean intrastate or interstate, or both, as applicable, except as specifically provided in this act.”*

In addition, the Michigan Legislature included language in Section 480.11a(b)(i) that wherever the FMCSR used various terms regarding federal agencies, it referred to the Michigan State Police, and in Section 480.11a(b)(iii), wherever the FMCSR used various terms regarding federal agents, it referred to an officer of the Michigan State Police Motor Carrier Division or a peace officer. This is further evidence that the Legislature intended to fully implement the FMCSR in the State of Michigan.

- At the beginning of Section 390.5, the section of the FMCSR that defines various terms, the following language is used: “*Unless specifically defined elsewhere, in this subchapter...*” The attorney contends that this means the “commercial motor vehicle” definition in Part 350 must be used instead of the one in Section 390.5 because the term is defined elsewhere.

As used in Section 390.5, the term “subchapter” means Subchapter B of Title 49 of the Code of Federal Regulations (CFR), which is the Federal Motor Carrier Regulations, Parts 350-399. In fact, the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (USDOT/FMCSA) defines the term “commercial motor vehicle” in five separate places:

- o Part 350, for federal grant funding.
- o Part 382, for application of Drug and Alcohol Testing (mirrors the definition in Part 383).
- o Part 383, for application of the Commercial Driver License (the same definition found in Section 257.7a of the Motor Vehicle Code).
- o Part 385, for application of safety ratings (mirrors the Part 390 definition and includes intrastate hazardous materials transporters).
- o Part 390, for applicability of all other Parts the FMCSR.

## 2.

The definition in Section 390.5 is to be applied in every Part of the FMCSR except those Parts that define the term differently. For purposes of roadside enforcement, the definition for “commercial motor vehicle” in Section 390.5 applies to Parts 390-399. The definition in Section 257.7a is only applied to determine applicability of commercial driver licenses (CDLs).

In conclusion, the definitions in Part 350 and in Section 257.7a of the Motor Vehicle Code do not apply to the Michigan Motor Carrier Safety Act, Act 181 PA 1963. Act 181 does define the term “commercial motor vehicle,” which is found in Section 390.5 of the FMCSR, as adopted into state law by the Michigan Legislature, and includes the application of the FMCSR to intrastate transportation.

## Appendix

Section 390.5, as adopted by Act 181 PA 1963:

“*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.”

Section 257.7a of Act 300 PA 1949:

“Commercial motor vehicle” means a motor vehicle designed to transport 16 or more passengers, including the driver; a motor vehicle, having a gross vehicle weight rating of 26,001 or more pounds; a motor vehicle with a gross combination weight rating of 26,001 pounds or more including a towed unit

with a gross vehicle\_weight rating of more than 10,000 pounds; or a motor vehicle carrying hazardous material and on which is required to be posted a placard as defined and required under 49 C.F.R. parts 100 to 199. A commercial motor vehicle does not include a vehicle used exclusively to transport personal possessions or family members for nonbusiness purposes.”