



# THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Fall 2009

## **MADCM ANNUAL CONFERENCE IN REVIEW**

The MADCM Annual Conference was held Sept. 30 through October 2, 2009 at The Park Place in beautiful Traverse City, Michigan. We had spectacular mealtime views from "Top of the Park" Restaurant. Thursday's sunrise during the breakfast buffet was especially noteworthy. At our Banquet Thursday night the Distinguished Service Award was given to our longtime MADCM Board Member and Past President Robert Clark from Berrien County Trial Court (5th District).

We shared the Park Place with MECRA Conference [Michigan Electronic Court Recorders Association], and the Park Place did very well accommodating both conferences.

We heard from Magistrate Judge Mark Randon, from the US District Court for the Eastern District of Michigan on the issue of setting bond. Judge Elizabeth Hines of the 15<sup>th</sup> District Court also spoke on setting bond on DV cases.

Mr. Tom Robertson, from the Prosecuting Attorney's Association of Michigan gave us a colorful talk on the new medical marihuana [or marijuana] law. Also, Jill Booth from SCAO presented to us on new legislative changes.

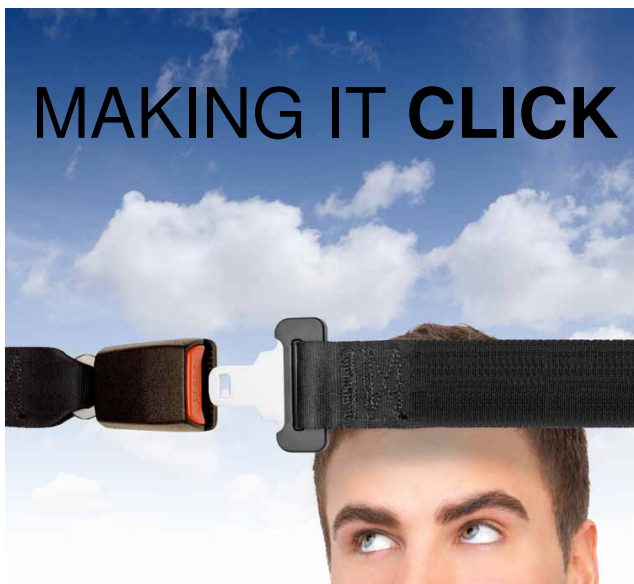
Sgt. Lance Cook of the Michigan State Police, Traffic Services Section, enlightened and entertained us on the latest and greatest traffic and vehicle laws.



## Michigan Traffic Safety Summit

Kellogg Hotel & Conference Center  
East Lansing, Michigan  
March 30-April 1, 2010

Mark your calendars for the **15th Annual Michigan Traffic Safety Summit** to be held at the Kellogg Hotel & Conference Center, East Lansing, Michigan. It will be held March 30-April 1, 2010. Visit [www.michigan.gov/ohsp](http://www.michigan.gov/ohsp) for updates and information.



## MICHIGAN HIGH SCHOOL SEAT BELT PROGRAM

Dear Michigan High School:

Traffic crashes are the leading cause of death and injury for teenagers in Michigan. Between 2000 and 2008, over 96,000 high school age teens were killed or injured in traffic crashes in our state. The numbers are dramatic, alarming, and impact your students, their families and friends, and your faculty and staff.

Every day, our media headlines include stories of traffic crashes that have resulted in deaths and life-altering injuries to teen drivers and passengers, many of which could have been prevented through the simple act of buckling up. To address this urgent traffic safety issue, the Michigan Office of Highway Safety Planning offers the Michigan High School Seat Belt Program, to raise awareness among Michigan's teen population and encourage compliance with the state's mandatory seat belt law.

An easy-to-follow manual outlines the steps it takes to implement the Seat Belt Program. The program is simple and involves pre- and post-seat belt observation surveys and an array of activities designed to engage students in promoting seat belt use to their peers.

It is not often that you are presented with a true win-win opportunity. Don't miss this chance to impact your student population with a life-saving program.

Sincerely,  
MICHAEL L. PRINCE, Director  
Office of Highway Safety Planning

## Underage Drinking and the PBT

*An excerpt from an article by Mr. Kenneth Stecker,  
PAAM Traffic Safety Resource Prosecutor*

On September 10, 2009, in *People of the City of Troy v. Chowdhury*, Case No. 288696 (Mich. App., September 10, 2009) (For Publication), a number of young adults under 21 years of age were allegedly drinking alcoholic beverages at a house party in the City of Troy. The officers proceeded to administer preliminary breath tests (PBTs) to the young adults. One of the officers administered a PBT to the defendant, which resulted in 0.025.

The City of Troy Ordinance at issue in the case reads in pertinent part, that "A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic beverages may require the person to submit to a preliminary chemical breath analysis."

After having been charged with violating the Ordinance, the defendant moved to suppress the results of the PBT. Defendant argued that the Ordinance was unconstitutional because it allowed a police officer to perform a warrantless search, because warrantless searches are generally considered unreasonable unless an exception applies, and because no exception to the warrant requirement was applicable in his case.

PBTs

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## Q & A on Assessments

1. Crime Victim Assessment still must have at least one count that results in a conviction. If the most serious charge in the original Complaint was a Felony then \$60, no matter what reduced to. If the most serious charge in the original Complaint was a Serious or Specified Misdemeanor, then \$50, no matter what reduced to. **Only one assessment per case.**

2. State Minimum Costs are assessed **one for each count** which results in a conviction.

All misdemeanor convictions get \$48, except Serious or Specified Misd. (\$53), and except reduced from a Felony (\$68) or reduced from Serious (not Specified) (\$53). Reductions from Specified only carry the \$48 amount.

The minimum state cost is based upon the offense convicted of [MCL 769.1j] and a felony or serious misdemeanor reduced to a misdemeanor is defined as a serious misdemeanor and assessed \$53 [MCL 780.811(1)(a)(xviii)].

<http://courts.michigan.gov/scao/resources/other/CrimeVictimAssessment.pdf>

## Automobile Transporter

*An excerpt from the Commercial Motor Vehicle Enforcement Quarterly, October 2009 Edition.*

### **SIZE AND WEIGHT**

#### **Automobile Transporter**

A recent federal interpretation has created some inconsistencies with the definition of an automobile transporter found within the Code of Federal Regulations (23 CFR 658) and the Michigan Motor Vehicle Code (257.719).

It is the Federal Highway Administration's (FHWA) position that in order for specialized equipment to meet the definition of an automobile transporter under 23 CFR 658.13(e)(1), the entire vehicle combination must be designed for the transportation of assembled vehicles. If the power unit is not designed and equipped with vehicle-carrying capability then the combination is not considered an automobile transporter regardless of the trailer's design or commodity carried.

Unlike the Code of Federal Regulations (23 CFR 658) the Motor Vehicle Code (Act 300) does not have a definition for an automobile transporter. Therefore, the maximum allowable length for a combination of a truck and semi trailer or trailer, or a truck tractor, semi trailer, and trailer, or truck tractor and semi trailer is based on the commodity carried - assembled motor vehicles or bodies.

To be consistent with the recent federal interpretation it is the policy of the Traffic Safety Division that tractor-trailer combinations in which the power unit is not designed to haul an assembled vehicle will no longer be considered automobile transporters under 23 CFR 658.13(e)(1) while operating on designated highways (green and gold routes). A tractor-trailer combination hauling assembled vehicles will not have an overall length provided the semi trailer does not exceed 53 feet. Any overhang from an assembled vehicle will be included when determining the maximum allowable length of the semi trailer.

Tractor-trailer combinations designed and used exclusively to transport assembled motor vehicles or bodies, including those not designed to haul an assembled vehicle on the power unit will be limited to an overall length of 65 feet as specified in the Michigan Motor Vehicle Code (257.719) while operating on all non-designated routes.

It is these kinds of questions that an officer should ask. MIP charges are not dead and buried, just the use of the PBT is – when trying to compel a test. Of course, in the appropriate situation, an officer can always get a search warrant for the person's blood.

Additionally, another tool that some law enforcement officers have is the "P.A.S." (Passive Alcohol Sensor) Flashlight.

This is a flashlight that has at the other end a sensor for alcohol. The P.A.S. is used to check for the presence or absence of alcohol with or without a subject's direct participation. When used without the subject's direct participation it is known as passive sampling, as opposed to active testing where the subject blows directly into a mouthpiece. While it does not give a BAC reading, it provides an indication and may be very useful in these cases – now that there are issues with the PBT. Since it is taking the air around the person, there should be no issues under the 4<sup>th</sup> amendment.

It should be noted that MIP cases are important tools in indicating future alcoholism. Alcohol can damage a child's brain, causing long term damage as the brain is not fully developed. There is the obvious concern, minors drink and then drive – and then all too often, they die. Being proactive in these cases can help the community in the long run and save lives right now. While we can no longer compel a PBT to be given to a minor, this does not mean that these cases shouldn't be enforced and prosecuted.

In support of his position, defendant cited two cases in which the United States District Court for the Eastern District of Michigan had ruled that a similarly worded ordinance and a similarly worded state statute were unconstitutional. See, *Spencer v. Bay City*, 292 F. Supp. 2d 932 (ED Mich, 2003); *Platte v. Thomas Township*, 504 F. Supp. 2d 227 (ED Mich., 2007).

The City of Troy argued that the federal case law relied on by the district court and circuit court failed to adequately address the "special needs" exception to the search requirement. The City contended that the "special needs" exception should be applied in this case because there is a compelling state interest in protecting young people from the dangers of alcohol abuse and in protecting the general

public from the potential consequences of alcohol abuse by young persons.

The Court of Appeals ruled that "the decisions in *Spencer* and *Platte* are well-reasoned and consistent with existing Fourth Amendment law." The Court concluded that the Troy Ordinance was unconstitutional on its face.

As to the "special needs" issue the Court agreed with the *Spencer* Court that "there is nothing special in the need of law enforcement to detect evidence of ordinary criminal wrongdoing and that reasonableness generally requires the obtaining of a judicial warrant." Therefore, the "special needs" exception to the search warrant requirement was not applicable.

### Future MIP Investigations

**Bottom line, police officers should not request a minor submit to a PBT unless they have previously secured a search warrant for the test or alternatively, have obtained a valid and documented consent from the minor to be tested.**

Law enforcement officers will have to do an investigation using the tools they learned before technology:

- What is in their hands?
- How do their eyes look?
- What do they smell?
- How do they speak?
- How do they act?
- Are there beer bottles around the person?
- What evidence is there that the minor had been drinking?

### Proposed Legislation to Watch

- HB 4098    Would eliminate Driver Responsibility Fees.  
SB 317
- HB 4101    Would amend Driver Responsibility Fees to one-year assessments instead of two-year.
- HB 4141    Would add \$10 fee to all alcohol-related convictions to be paid to Supreme Court for drug treatment courts.
- HB 4163    Would require use of headlights during periods of precipitation.

- HB 4267 Would prohibit courts from furnishing to the public a copy of an arrest or bench warrant until it is returned (arrest made).
- HB 4322 Would create a new 30-day misdemeanor for providing false information regarding court-ordered community service.  
**Passed House – 6/10/09**
- HB 4343 Would amend window tint law to: (1) allow person to operate vehicle with tint if they reside with the owner who has doctor letter and have permission from the owner; (2) allow other person to operate vehicle with tint if the owner who has a doctor letter is a passenger in the vehicle; and (3) require a new SOS sticker in the back window of a vehicle that has tint and owner has the required letter from a doctor.
- HB 4360 Would codify the extension of the seat belt usage exemption to newspaper delivery personnel, and defines “frequent stops” as a series of stops with at least 1 stop within every ½ mile of travel.
- HB 4362 Would prohibit use of cell phones while operating school bus.
- HB 4369 Would prohibit use of mobile phones while operating a motor vehicle, unless hands-free or under certain exceptions.
- HB 4370, 4394 Would prohibit messaging on an electronic wireless device while operating a motor vehicle.
- HB 4482, SB 80 Would amend fleeing and eluding offenses to add a 2-year mandatory minimum to all degrees.
- HB 4493 Would prohibit all first year drivers from having more than 1 passenger under 18 years of age other than family member in car.
- HB 4495 Would remove the horsepower threshold from the definition of a moped.
- HB 4604, SB 127 Amend Driver Responsibility Fees - add for certain offenses, and eliminate for certain offenses. Also, payment options amended.
- HB 4648 Would regulate motor vehicle pursuits by police officers.
- HB 4705 & 4706 Would create an Indigent Defense Counsel Fund, and require Courts to impose a 5% bail surcharge and sliding scale probation fee (not to exceed \$135), and transmit monies to the Treasury Dept. for the Fund.
- HB 4748 Would require police officers to ascertain and indicate the race or ethnicity of a person to whom a traffic citation is issued.
- HB 4978 Would prohibit lane changes in an intersection.
- HB 5087 Would modify the definition of off-road recreation vehicle. **Passed House – 6/23/09**
- HB 5123 Would require district court magistrates to be licensed attorneys.
- HB 5140 Would require removal from roadway of motor vehicle involved in accident. **Passed House – 11/5/09**
- HB 5143 Would revise provision relating to establishment of speed limits.
- HB 5254 Would abolish motorcycle helmet requirement.
- HB 5277 Would extend expiration of driver’s licenses or permits to the next business day if expires on a government shutdown day.
- HB 5506, HB 5600 Would reestablish speed restrictions on certain gravel and dirt roads.
- SB 473 Would require (whenever possible) the use of 2-Way Interactive Video in certain proceedings.
- SB 566 Would require written notification of the applicability of a driver responsibility fee on a traffic citation written for no proof of insurance.