



THE DOCKET

The Newsletter of the Michigan Association of District Court Magistrates

Fall 2013

Helping Keep Teen Drivers Safe

Re-printed article from the Secretary of State Express Newsletter (12/12/13)

Secretary of State Ruth Johnson announced a new program to help teen drivers and their parents better practice safe driving skills this month at Edsel Ford High School in Dearborn. Johnson, along with representatives from Ford Motor Co. and the Safe Roads Alliance, announced [The Parent's Supervised Driving Program](#), a new practice driving guide sponsored by Ford at no cost to taxpayers that is being distributed to parents of teen drivers at Secretary of State offices. The ultimate goal of the program is to help reduce the number of vehicle crashes, the leading cause of death for 14- to 18-year-olds in the U.S.

"Driving is a complex task and young drivers need to get some valuable supervised road experience before they are behind the wheel," Secretary Johnson said. "Anything we can do to improve upon practice time can ultimately help reduce crashes and keep our teens and other motorists alive."

The program also includes a mobile app that teens can use to log and track their driving practice hours. Teens are required to complete 50 hours of driving with a parent or guardian, including 10 hours at night, before taking a road-skills test and being allowed to drive by themselves.

Look for the guide online as well as more resources for teen drivers and their parents at www.michigan.gov/teendriver

their teen drivers get the most out of the supervised driving requirement under Michigan's Graduated Driving Licensing law. The material is designed for behind-the-wheel supervision so it is clear, concise and easily put into practice. The guide begins with basic skills such as moving, stopping and steering and progresses to more advanced skills such as anticipating the actions of other drivers and avoiding crashes. It provides parents with the tools and information they need to effectively coach their teen driver through the complex task of learning to drive safely. This guide was created to address a need to improve roadway safety and teen driving behaviors nationwide. In Michigan, this free guide is available to parents and teens as a resource to enhance the required supervised driving process. The underwriting by Ford Motor Company covers 100 percent of the program's cost and allows sponsors to share in the mission to improve teen drivers' safety.

http://michigan.gov/documents/sos/ParentsSupervisedDrivingGuide2013_434865_7.pdf

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The **Parent's Supervised Driving Guide** provides a practical and detailed instruction plan to help parents and

Why are DRE Officers so Important ?

By Kenneth Stecker, PAAM

The purpose of this article is to familiarize law enforcement officers, prosecutors, and others throughout the State of Michigan as to why a Drug Recognition Expert (DRE) Officer is so important in a drugged driving case.

Michigan Compiled Law 257.625 reads in pertinent part, as follows:

Sec. 625.

(1) A person, whether licensed or not, shall not operate 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. As used in this section, "operating while intoxicated" means any of the following:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

Thus, the prosecution must prove that the person was "operating while intoxicated," that is he/she is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance or a combination of alcoholic liquor, a controlled substance, or other intoxicating substance.

To be "under the influence" within the meaning of Criminal Jury Instruction 2d 15.3 means as follows:

"That because of drinking alcohol, the defendant's ability to operate a motor vehicle in a normal manner was substantially lessened.

To be under the influence, a person does not have to be what is called "dead drunk," that is, falling down or hardly able to stand up. On the other hand, just because a person has drunk alcohol or smells of alcohol does not prove, by itself, that the person is under the influence of alcohol. The test is whether, because of drinking alcohol, the defendant's mental or physical condition was significantly affected and the defendant was no longer able to operate a vehicle in a normal manner."

Recently, the Michigan Supreme Court in *People v. Koon*, 494 Mich 1; 832 NW2d 724 (2013): stated in a footnote as follows:

"Significantly, "under the influence" is a term of art used in other provisions of the Michigan Vehicle Code. See, e.g., MCL 257.625(1)(a) (stating that a person is "operating while intoxicated" if he or she is "under the influence of . . . a controlled

substance . . ."). See also *People v Lambert*, 395 Mich 296, 305; 235 NW2d 338 (1975) (concluding that an acceptable jury instruction for "driving under the influence of intoxicating liquor" included requiring proof that the person's ability to drive was "substantially and materially affected"); *Black's Law Dictionary* (9th ed), p 1665 (defining "under the influence" as "deprived of clearness of mind and self-control because of drugs or alcohol")."

In an effort to address this issue of driving "under the influence" of a drug(s), the Michigan Office of Highway Safety Planning (OHSP) implemented a special program to train qualified law enforcement to become drug recognition experts (DREs).

In 2009 the Michigan Office of Highway Safety Planning (OHSP) requested through the National Highway Traffic Safety Administration (NHTSA) an assessment of Michigan's Standardized Field Sobriety Testing Program. One of the priority recommendations as a result of that assessment was Michigan should establish itself as a Drug Evaluation and Classification Program (DECP) state.

OHSP began in earnest to establish itself as a DECP State. OHSP assigned a state DRE Program Coordinator to determine the feasibility of Michigan becoming a DECP state. The DRE Program Coordinator created a DRE Steering Committee to include 4 current DREs in the state, Michigan's Traffic Safety Resource Prosecutor, and a retired Los Angeles Police Department Sergeant and DRE Emeritus currently living in the state as a consultant.

Michigan DRE Policy and Procedures were developed as outlined in the International Association of Chiefs of Police (IACP) Standards and Procedures for a DECP state and submitted to the IACP for approval. In October of 2010, the IACP granted Michigan approval as the 47th DECP state. As a DECP state, Michigan was allowed to conduct its own Drug Recognition Expert (DRE) School.

A DRE is a law enforcement officer who is trained to recognize impairment in drivers who are under the influence of drugs other than, or in addition, to, alcohol. Currently, there are 51 DRE law enforcement officers in the State of Michigan.

Although DREs may initiate their own arrests for operating under the influence of drug(s), the usual case is for a different officer, the arresting officer, to request the expertise and assistance of the DRE officer after making an arrest for "drugged driving."

The DRE should be requested to conduct an evaluation for drug influence when the arrestee's signs and symptoms are not consistent with the arrestee's blood-alcohol concentration (BAC). Simply stated, the arrestee may appear more intoxicated than the alcohol level alone would suggest. Law enforcement agencies may seek a drug-influence evaluation by a DRE whenever an individual is arrested for OWI and produces a BAC below .08%. In addition, an evaluation may occur whenever the arrestee's

degree and/or type of intoxication are not consistent with the arrestee's BAC.

A DRE is trained to determine whether:

- The arrestee's impairment is not consistent with the BAC;
- The arrestee is suffering from a medical condition that requires immediate attention or is under the influence of drugs; and
- The individual is under the influence of a specific category (or categories) of drugs.

In order to reach the three determinations, DREs use a 12-step standardized and systematic process. It is standardized because all DREs, regardless of agency, use the same procedure, in the same order, on all suspects. It is systematic in that it logically proceeds from a BAC, through an assessment of both clinical and psycho-physical signs of impairment, to toxicological analysis for the presence of drugs.

In essence, based on the totality of the evaluation, the DRE forms an opinion as to whether or not the subject is impaired. If the DRE determines that the subject is impaired, the DRE will indicate what category or categories of drugs may have contributed to the subject's impairment. The DRE bases these conclusions on his training and experience and the DRE Drug Symptomatology Matrix, which is broken down into seven drug categories.

The 7 drug categories contained in the matrix are as follows:

1. Central Nervous System Depressants
2. Inhalants
3. Dissociative Anesthetics
4. Cannabis
5. Central Nervous System Stimulants
6. Hallucinogens
7. Narcotic Analgesics

While the DREs use the drug matrix, they also heavily rely on their general training and experience. After completing the evaluation, the DRE normally requests a blood sample from the subject for a toxicology lab analysis.

The DRE process is not a test; rather, it is a method for collecting evidence. Nevertheless, there have been challenges to the admissibility of DRE testimony and evidence.

In Michigan, courts employ the *Daubert* standard for determining the admissibility of scientific evidence.

The *Daubert* standard derives from the United States Supreme Court decision of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Pursuant to *Daubert*, courts serve as a "gatekeeper" for all scientific evidence, regardless of newness or

novelty. Scientific evidence is admissible if the court determines that the underlying "reasoning or methodology" is "scientifically valid."

Although Michigan higher courts have not addressed the issue of DRE testimony and evidence under the *Daubert* standard, other *Daubert* states that considered the admissibility of the DREs have found the DRE's testimony to be admissible under *Daubert*.

A list of some of these states and courts includes: Nevada, Oregon, Iowa, Hawaii, New Mexico, and Nebraska.

Therefore, the prosecutor should emphasize that the DRE protocol is not novel or new, but rather a list of procedures that have been used by medical science and the law enforcement community for a number of years.

It is important to keep in mind that the DRE Program in Michigan is one of the most effective tools in the battle against impaired driving.

Impaired driver driving with alcohol and/or controlled substances and/or intoxicating substances in Michigan are killing and seriously injury innocent drivers on our highways. While DRE cannot prevent this from happening, they certainly can help minimize it. Our streets, highways, and communities deserve it!

To learn more about Michigan's DRE Program, please contact Mike Harris, the DRE Coordinator and Law Enforcement Liaison for the Michigan Office of Highway Safety Planning. Also, the following publications are helpful in understanding more about the DRE Program.

"The Drug Evaluation and Classification (DEC) Program, Targeting Hardcore Impaired Drivers," American Prosecutors Research Institute.

"Drug-Impaired Driving: Understanding the Problem & Ways to reduce It, A Report to Congress," National Highway Traffic Safety Administration.

For more information on this article and PAAM training programs, contact Kenneth Stecker, Traffic Safety Resource Prosecutor, at (517) 334-6060 or e-mail at steckerk@michigan.gov. Please consult your prosecutor before adopting practices suggested by reports in this article. Discuss your practices that relate to this article with your commanding officers, police legal advisors, and the prosecuting attorney before changing your practice.

ASK TRIAL COURT SERVICES

Question:

Is it appropriate for a court to assess as costs [award to plaintiff] a \$150 trial fee in for a small claims case?

Answer:

Under MCL 600.5759 (Summary Proceedings to Recover Possession of Premises) the court can charge \$75 for a judgment taken by consent or default and/or charge \$150 for a trial for a claim for possession case or a money judgment case.

However, these costs are not appropriate in a small claims cases. MCL 600.8420 sets forth what can be assessed for costs in a small claims case. The cost of trial should never be assessed in small claims case since there is not really a trial (the Rules of Evidence do not apply) but instead a hearing.

Question:

If a traffic ticket isn't served on the defendant at the scene, how must the ticket be served upon the defendant?

Answer:

Statute specifies that the officer *shall deliver* the copy of the citation to the alleged offender. See MCL 257.741(1) and 742(5). Court rule states the citation service is to be *on the alleged violator*. See MCR 4.101(A). Both indicate service on a person. Therefore, I think MCR 2.105 (A)(2) guides the proper service of a traffic citation when the officer issues the ticket after the alleged violator has left the scene.

2.105 (A) Individuals. Process may be served on a resident or nonresident individual by (1) delivering a summons and a copy of the complaint to the defendant personally; or (2) sending a summons and a copy of the complaint by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the defendant acknowledges receipt of the mail. A copy of the return receipt signed by the defendant must be

attached to proof showing service under subrule (A)(2).

Question:

Who has to authorize a non-traffic civil infraction if the officer does not witness the violation, but a citizen does and complains to law enforcement?

Answer:

MCL 600.8707(2) provides that a police officer may issue a citation to a person for a violation the officer did not witness so long as the officer, after investigating the complaint made by someone who allegedly witnessed the violation, has reasonable cause to believe the person is responsible for the civil infraction and the prosecuting attorney or city attorney authorizes it in writing.

Save the Date !!!

**New Magistrate Seminar
February 26-28, 2014
Michigan Hall of Justice Conference
Center
Lansing, Michigan**

If you know of a new magistrate who has not taken the required MJJ training in order to conduct informal hearings, please contact Pete at StathakisP@courts.mi.gov or (517) 373-7607.

2014 MADCM Board Meeting Dates

Thurs, Jan 16, 2014
Thurs, April 17, 2014
Thurs, July 31, 2014

MJJ at Hall of Justice, Lansing, MI

CHRISTMAS JUSTICE OR INJUSTICE ?

Grand Rapids Township 12/6/13 –

Today, 63rd District Court Magistrate, Mike Milroy, found a **Mr. Nicholas Claus** responsible for a traffic citation at an informal hearing. When asked whether he even considered disqualifying himself, Magistrate Milroy responded “No. I knew I might take some bad publicity for it, but the ‘facts are the facts’ and the police officer presented his case fully and completely. Besides, I’ve had many good Christmases in my life, and one bad one won’t set me back too bad.”

It just goes to show you how fair and impartial District Court Magistrates are.....willing to take one on the chin for doing the right thing, and at their own personal Christmas peril dispensing justice to all despite how powerful or important the litigants are.

Even though the charged offense was a non-moving violation and will garner no points from SOS, **we can only hope that Mr. Claus’ will only take it out on Magistrate Milroy under the tree this Christmas, and not all District Court Magistrates.**

Merry Christmas everyone !!!

Myths and Facts About Seat Belts

MYTH: Seat belts are uncomfortable or inconvenient.

FACT: Initially people may find seat belts uncomfortable, confining or inconvenient simply because they're not used to wearing them. Those people who have made buckling up a habit can testify that once their use does become a habit, there is no discomfort or inconvenience. It can't be overemphasized that the serious discomfort and inconvenience of motor vehicle crash injury in no way compares to the imaginary discomfort or the inconvenience you may think you feel wearing a seat belt the first few times.

MYTH: The seat belts in my car don't work.

FACT: It's important that everyone realizes that newer shoulder belts are made so that you can move comfortably but they will still lock up during sudden stops or crashes. Many people mistake this freedom of movement as a broken mechanism. Newer shoulder belts are designed to lock up only when the car changes speed or direction suddenly, not when the occupant changes position.

MYTH: Drivers in air bag-equipped vehicles don't need to wear seat belts.

FACT: Air bags provide supplemental protection in frontal crashes, but motorists can slide under them if they are not wearing a seat belt. In addition, air bags will not help in side or rear impact or rollover crashes. Motorists should wear a seat belt for protection in all types of crashes.

MYTH: I don't want to be trapped in a fire or underwater.

FACT: Crashes involving fire or water happen in only 1/2 of one percent of all crashes. So it doesn't happen often. However, when they do occur the best chance of survival rests in remaining conscious, uninjured, and in full possession of your faculties. The greatest danger is with the impact that precedes the fire or submersion in water. If you're not using a seat belt, it's very likely that you will be knocked unconscious or severely injured. If you're belted, it's very likely you will be able to unbuckle yourself and get out of a potential fire or submerged car situation.

MYTH: I'd rather be thrown clear in a crash.

FACT: Being thrown safely clear in a crash is almost impossible. When you're thrown, you may be thrown through the windshield, scraped along the pavement, or even crushed by your own vehicle or another one. The idea of being thrown from a car and gently landing in a grassy area beside the road is pure fantasy. Your best bet in a crash is to stay inside the vehicle, securely held by your seat belt.

MYTH: Seat belts can hurt you in a crash.

FACT: Properly worn seat belts seldom cause injuries. If they do, the injuries are usually surface bruises and are generally less severe than would have been the case without any belt. Without seat belts, you could have been thrown out of the vehicle and severely injured. It is true that sometimes the force of a crash is so great that nothing could have prevented injuries. Studies have consistently shown that injuries in most serious crashes would have been much more severe had seat belts not been worn.

MYTH: I'm not going far and I won't be going fast.

FACT: This is the comment that so many people living in rural areas use when asked why they do not buckle up. It's important to remember that most crash deaths occur within 25 miles of home and at speeds of less than 40 miles per hour. This emphasizes that everyday driving from just one neighbor's home to another, to school, or to the corner store poses the greatest danger.

MYTH: The chance that I'll have an accident is so small, those things only happen to other people.

FACT: This is an attitude that is universal to everything we do. It's comfortable to think that accidents only happen to other people. However, one out of three people will be seriously injured in a car crash sometime during their lives. This is really a significant risk. We never know when it will occur or how it will occur. The answer -- buckle up every trip, every time.

MYTH: I'm a good driver, it won't happen to me.

FACT: You may be a good driver but you cannot always control the other drivers on the road. The statistics related to motor vehicle crashes and drunk drivers are devastating. Even if you are driving defensively, a drunk driver coming around the next curve may not be. Again, you never know what might happen. Play it safe. Buckle up every trip, every time.

Save the Date !!!

**Michigan Traffic
Safety Summit
March 25-27, 2014**

**2014 MADCM Annual
Conference**

September 10-12, 2014

***West Bay Beach*, a Holiday Inn Resort
Traverse City, MI**

<http://www.tcwestbay.com/>